Committee on Criminal Justice Appropriations

Tuesday, April 04, 2006
4:00 pm – 6:00 pm
214 Capitol

Allan Bense
Speaker

Gustavo Barreiro, CHAIR
Arthenia Joyner, Vice-Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Appropriations Committee

Start Date and Time:	Tuesday, April 04, 2006 04:00 pm OR 15 MINUTES UPON ADJOURNMENT OF FISCAL COUNCIL
End Date and Time:	Tuesday, April 04, 2006 06:00 pm
Location:	214 Capitol
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 271 CS Custody of Criminal Defendants by Kreegel
HB 585 CS Inmate Litigation Costs by Hukill
HB 7169 Juvenile Justice Pilot Program by Juvenile Justice Committee
HB 1593 Cybercrime by Barreiro
HB 761 Trespass on the Property of a Certified Domestic Violence Center by Carroll
HB 827 Pretrial Release by Planas
HB 325 CS Commission on Capital Cases by Gelber

NOTICE FINALIZED on 03/31/2006 16:23 by SLB

Florida House of Representatives

Fiscal Council

Committee on Criminal Justice Appropriations

Allan Bense
Speaker

Gustavo Barreiro
Chair

AGENDA
COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS
TUESDAY, APRIL 04, 2006
4:00pm - 6:00pm
214 Capitol

I. Roll Call and opening comments by Chair Barreiro

II. Consideration of the following bills:

- **HB 271 CS by Kreegel- Custody of Criminal Defendents**
- **HB 325 CS by Gelber- Commission on Capital Cases**
- **HB 585 CS by Hukill- Inmate Litigation**
- **HB 761 by Carroll- Trespass on the Property of a Certified Domestic Violence Center**
- **HB 827 by Planas- Pretrial Release**
- **HB 1593 by Barreiro- Cybercrime**
- **HB 7169 by Juvenile Justice Committee- Juvenile Justice Pilot Program**

III. Adjourn

221 Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300 (850) 488-6204

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 271 CS Custody of Criminal Defendants
SPONSOR(S): Kreegel and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 688

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N, w/CS	Cunningham	Kramer
2) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Currently, if a state prisoner is arrested, an outside law enforcement agency (usually the sheriff of the county where the alleged crime occurred) comes to the state institution, arrests the prisoner, and transports the prisoner to a county facility. Counties generally return such prisoners to the prisoner's state institution when the prisoner is no longer needed in court or when a prisoner does not have impending court dates. If the prisoner's presence is later required in court, the sheriff returns to the state institution, assumes temporary custody of the prisoner, and transports the prisoner to a county facility.

This bill provides that, unless otherwise ordered by the court, arrested persons who are in the custody of the Department of Corrections at the time of arrest shall remain in the department's custody pending disposition of the charge, or until the person's sentence of imprisonment expires, whichever occurs earlier. The bill also provides that the provisions of s. 944.17(8), F.S., (requiring the sheriff to assume temporary custody and transport state prisoners to the county jail if the prisoner's presence is required in court for any reason) are to apply if the arrested state prisoner's presence is required in court for any reason.

This bill codifies an act that, in large part, is currently being practiced by the department. The Criminal Justice Impact Conference reviewed this bill on January 9, 2006, and determined that it would have an insignificant fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate the House principles.

B. EFFECT OF PROPOSED CHANGES:

In 2003, three inmates of Charlotte Correctional Institution were arrested for the murder of Correctional Officer Darla Lathrem and a fellow inmate during an alleged escape attempt. All three inmates were serving life sentences at the time of the murder and have violent criminal histories. Subsequent to the attacks, the Department of Corrections transferred the three inmates to Florida State Prison (FSP), a maximum security institution. After the defendants were indicted[1], counsel for one of the defendants moved the court to have the defendants transferred to the Charlotte County jail pending trial, pursuant to s. 907.04, F.S.[2] Over the objection of the Sheriff and the State, the trial court interpreted s. 907.04, F.S., as mandating that the defendants be held in the custody of the Charlotte County Sheriff in the county jail pending disposition of the charges. At this time, the defendants are still being housed at the Charlotte County jail.

Currently, if a state prisoner is arrested (either for a crime committed while incarcerated or for a crime committed prior to being incarcerated), an outside law enforcement agency[3] (usually the sheriff of the county where the alleged crime occurred) comes to the state institution, arrests the prisoner, assumes temporary custody of the prisoner, and transports the prisoner to a county facility.[4] Currently, counties generally return such prisoners to the prisoner's state institution when the prisoner is no longer needed in court or when a prisoner does not have impending court dates.[5] If the prisoner's presence is later required in court, the sheriff returns to the state institution, assumes temporary custody of the prisoner, and transports the prisoner to a county facility.[6]

This bill provides that, unless otherwise ordered by the court, arrested persons who are in the custody of the Department at the time of arrest shall remain in the Department's custody pending disposition of the charge, or until the person's underlying sentence of imprisonment expires, whichever occurs earlier. This bill also requires the application of the provisions of s. 944.17(8), F.S., if the arrested state prisoner's presence is required in court for any reason.

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[1] The defendants were indicted on charges of capital murder and escape.

[2] Section 907.04, F.S., states in part that if a person who is arrested does not have a right to bail for the offense charged, he or she shall be delivered immediately into the custody of the sheriff of the county in which the indictment, information, or affidavit is filed.

[3] Pursuant to s. 944.31, F.S., Department of Corrections' inspectors who have been designated by the Secretary as law enforcement officers have the authority to arrest state prisoners, but only in certain circumstances. Correctional officers do not have arrest powers. Thus, in most instances, it is not a Department of Corrections' employee who arrests inmates who have committed a crime, but rather an outside law enforcement agency.

[4] Representatives with the Department state that there are occasions where the Department transports a prisoner to a county facility.

[5] Prisoners must be returned to the state institution from which they came. Thus, if a prisoner has numerous court proceedings to attend in a short time-frame, a county that is geographically far away from a prisoner's institution (i.e. the prisoner is incarcerated in north Florida and the new arrest originates from Dade county) may keep the prisoner in a county facility rather than transport the prisoner back and forth across the state numerous times. Counties can also request that DOC transfer a prisoner to a state institution that is closer to the arresting county, though this is not always possible due to lack of bed space, security concerns, etc...

[6] Section 944.17(8), F.S., states in part that if a state prisoner's presence is required in court for any reason after the sheriff has relinquished custody to the Department of Corrections, the court shall issue an order for the sheriff to assume temporary custody and transport the prisoner to the county jail pending the court appearance.

C. SECTION DIRECTORY:

Section 1. Amends s. 907.04, F.S.; providing that if a person is arrested, and at the time of the arrest is in the custody of the Department of Corrections under sentence of imprisonment, unless otherwise ordered by the court, such person shall remain in the Department of Corrections' custody pending disposition of the charge, or until the person's underlying sentence of imprisonment expires, whichever is earlier; providing that if the arrested state prisoner's presence is required in court, the provisions of s. 944.17(8), F.S., shall apply.

Section 2. This act takes effect on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Corrections states that data to determine the approximate number of inmates this bill would affect is unavailable. However, it appears that counties currently return many state prisoners who have been arrested to state institutions once the prisoner does not have any impending court dates. Thus, because the bill appears to codify an act that, in large part, is currently being practiced, it would not appear to have a significant fiscal impact.

The Criminal Justice Impact Conference reviewed this bill on January 9, 2006, and determined that it would have an insignificant impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to

raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 25, 2006, the Criminal Justice Committee adopted one amendment to the bill and reported the bill favorably with committee substitute. The amendment addressed some of the issues raised in the original bill analysis. Specifically, the amendment: specifies that unless otherwise ordered by the court, a state prisoner will remain in the Department's custody pending disposition of the charge or until the prisoner's underlying sentence of imprisonment expires, whichever occurs earlier. The amendment also includes a reference to s. 944.17(8), F.S., to clarify that it is the sheriff's responsibility to assume temporary custody and transport an prisoner if the prisoner's presence is required in court for any reason.

CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to custody of criminal defendants; amending s. 907.04, F.S.; providing that arrestees in the custody of the Department of Corrections at the time of arrest be retained in the department's custody pending disposition of the charge or until the expiration of the arrestee's original sentence of imprisonment; requiring application of specified provisions if an arrested state prisoner's presence is required in court; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 907.04, Florida Statutes, is amended to read:

907.04 Disposition of defendant upon arrest.--

(1) Except as provided in subsection (2), if a person who is arrested does not have a right to bail for the offense charged, he or she shall be delivered immediately into the

custody of the sheriff of the county in which the indictment, information, or affidavit is filed. If the person who is arrested has a right to bail, he or she shall be released after giving bond on the amount specified in the warrant.

(2) If the person who is arrested is, at the time of arrest, in the custody of the Department of Corrections under sentence of imprisonment, unless otherwise ordered by the court, such person shall remain in the department's custody pending disposition of the charge or until the person's underlying sentence of imprisonment expires, whichever occurs earlier. If the arrested state prisoner's presence is required in court for any reason, the provisions of s. 944.17(8) shall apply.

Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **271 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Criminal Justice Appropriations

Representative(s) Kreegel offered the following:

Amendment (with directory and title amendments)

Remove line(s) 17, insert:

Section 1. Subsections (16) and (17) are added to section 901.15, Florida Statutes, to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(16) There is probable cause to believe that the person has committed an exposure of his or her sexual organs in violation of s. 800.03.

(17) There is probable cause to believe that the person has committed an act of voyeurism in violation of s. 810.14(1).

(Redesignate subsequent sections.)

Amendment No. (for drafter's use only)

21

22 ========== D I R E C T O R Y A M E N D M E N T ==========

23 Remove line(s) and insert:

24

25

26 ========== T I T L E A M E N D M E N T ==========

27 Remove line(s) 6 and 7 and insert:

28 An act relating to arrests and arrestees; amending s.

29 901.15, F.S.; prescribing additional offenses for which a person

30 may be arrested on probable cause and without warrant; amending

31 s. 907.04, F.S.; providing that arrestees in the

32

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 325 CS Commission on Capital Cases
SPONSOR(S): Gelber
TIED BILLS: **IDEN./SIM. BILLS:** SB 360

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Kramer	Kramer
2) Governmental Operations Committee	5 Y, 0 N, w/CS	Mitchell	Williamson
3) Criminal Justice Appropriations Committee		DeBeaugrine	DeBeaugrine
4) Justice Council			
5)			

SUMMARY ANALYSIS

The Commission on Capital Cases, a legislative commission within the Office of Legislative Services, maintains a registry of attorneys qualified to represent defendants in capital collateral (postconviction) proceedings. Currently, a registry attorney is authorized to represent only five capital collateral defendants at one time. This bill authorizes a registry attorney to represent up to seven capital collateral defendants at one time.

The bill significantly modifies the minimum qualifications for registry attorneys. The bill requires registry attorneys to submit reports to the commission on a quarterly basis. The bill authorizes court action and removal from the registry of attorneys for failing to execute the required contract within specified timeframes.

The bill allows an attorney appointed by a court to represent a capital defendant on a pro bono basis to receive certain expenses.

Currently, a registry attorney is entitled to payment at each stage of the postconviction process according to a statutory schedule. The bill modifies the payment schedule by authorizing payment of an attorney after the final evidentiary hearing has been held on the defendant's postconviction motion rather than requiring the attorney to wait until the judge has ruled on the postconviction motion.

The bill provides a legislative finding that not all capital collateral cases are extraordinary or unusual, and requires written findings of fact where a judge deviates upward from the statutorily authorized fee schedule.

This bill does not appear to create, modify, or eliminate rulemaking authority.

The bill does not appear to create, modify, amend, or eliminate revenues of state government or of local governments. The expenditure impact on state government is indeterminate, but expected to be minimal. The bill does not appear to create, modify, amend, or eliminate expenditures of local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate the House principles.

B. EFFECT OF PROPOSED CHANGES:

Commission on Capital Cases

Section 27.709, F.S. creates the Commission on Capital Cases, a legislative commission within the Office of Legislative Services which is tasked with reviewing the "administration of justice in capital collateral cases". The commission is comprised of two members appointed by the Governor,[1] two Senators appointed by the President of the Senate[2] and two members of the House of Representatives appointed by the Speaker of the House of Representatives.[3]

Overview of Postconviction Proceedings in Capital Cases: A defendant who is convicted of a crime in which the death penalty is imposed receives a direct appeal of his or her sentence and conviction to the Florida Supreme Court. At this stage, a capital defendant is represented by the public defender's office, if the defendant is indigent, or by a private attorney. Matters which are raised on direct appeal include evidentiary rulings made by the trial court during the course of the defendant's trial, and other matters objected to during the course of the trial such as the jury instructions, prosecutorial misconduct, and procedural rulings made by the trial court. If the Florida Supreme Court affirms the capital defendant's conviction and sentence, a defendant can appeal that decision to the United States Supreme Court by filing a petition for writ of certiorari. If the Supreme Court refuses to hear or rejects the defendant's appeal, a defendant is entitled to begin state postconviction proceedings.

State postconviction proceedings are controlled by rules 3.850, 3.851 and 3.852 of the Florida Rules of Criminal Procedure. Unlike a direct appeal, which challenges the legal errors apparent from the trial transcripts or record on appeal, a collateral postconviction proceeding is designed to raise claims which are "collateral" to what transpired in the trial court. Postconviction proceedings usually involve claims that the defendant's trial counsel was ineffective, claims of newly discovered evidence or claims that the prosecution failed to disclose exculpatory evidence. Since the consideration of these claims often require new fact finding, collateral postconviction motions are filed in the trial court which sentenced the defendant to death. Appeals from the grant or denial of postconviction relief are to the Florida Supreme Court.

After completion of state postconviction proceedings, a capital defendant is entitled to file a petition for writ of habeas corpus in federal court. The federal court reviews whether the conviction or sentence violates federal law. Federal habeas is limited to consideration of claims previously asserted on direct appeal or in state postconviction proceedings. The most common issue raised is whether the defendant's trial counsel was ineffective.

Finally, once the Governor signs a death warrant, a defendant will typically file a second Rule 3.850 motion and a second federal habeas petition along with motions to stay the execution.

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[1] Judge Paul M. Hawkes, First District Court of Appeal, and Judge Leslie B. Rothenberg, Fourth District Court of Appeal, are the current appointees of the Governor. *See* Comm'n on Capital Cases, Members, available at http://www.floridacapitalcases.state.fl.us/c-members.cfm (last visited Mar. 1, 2006).

[2] Senators Walter G. "Skip" Campbell, Jr. and Victor D. Crist are the current appointees of the Senate President. *See* Comm'n on Capital Cases, Members, available at http://www.floridacapitalcases.state.fl.us/c-members.cfm (last visited Mar. 1, 2006).

[3] Representatives Dan Gelber and Juan-Carlos "J.C." Planas are the current appointees of the Speaker of the House. *See* Comm'n on Capital Cases, Members, available at http://www.floridacapitalcases.state.fl.us/c-members.cfm (last visited Mar. 1, 2006).

In the middle and southern regions of Florida, the Capital Collateral Regional Counsel and private attorneys appointed by the court from a registry maintained by the Commission on Capital Cases provide postconviction representation to indigent capital defendants.[4] In the northern region of the state, representation is exclusively provided by private attorneys appointed by the court from the registry maintained by the Commission on Capital Cases.

Registry Attorneys

In 1998, the legislature created a registry of private attorneys to represent a death row inmate when a Capital Collateral Regional Counsel has an excessive caseload or has a conflict of interest. Since 2003 postconviction representation of all indigent capital defendants in the northern region of Florida has been provided by registry attorneys. The registry of attorneys is maintained by the Commission on Capital Cases and is comprised of lawyers who have met certain statutory criteria.[5] A registry attorney must be a member in good standing in the Florida Bar, with not less than three years experience in the practice of criminal law, and must have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five of these proceedings.[6] There are currently 138 registry attorneys who, along with 29 Public Defenders, are handling 412 postconviction collateral proceedings.[7]

A registry attorney is required to attend at least seven hours of continuing legal education each year that is specifically devoted to the defense of capital cases. A registry attorney is not permitted to represent more than five defendants in capital postconviction litigation at any one time.[8]

A registry attorney who is appointed by the court to represent a capital defendant is required to enter into a contract with the Chief Financial Officer. Section 27.711(4), F.S., provides a fee and payment schedule. Upon approval by the trial court, and after certain stages in litigation are complete, a registry attorney is entitled to payment of $100 per hour by the Chief Financial Officer, up to a maximum of:

- $2,500 upon accepting the appointment and filing the notice of appearance;
- $20,000 after timely filing in the trial court the capital defendant's complete original motion for postconviction relief;[9]
- $20,000 after the trial court issues a final order granting or denying the defendant's motion for postconviction relief;
- $20,000 after timely filing in the Florida Supreme Court the defendant's briefs that address the trial court's final order granting or denying the defendant's motion for postconviction relief and the state petition for writ of habeas corpus;
- $10,000 after the trial court issues an order, pursuant to a remand from the Florida Supreme Court, which directs the trial court to hold further proceedings on the motion for postconviction relief;

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[4] s. 27.701, F.S.
[5] s. 27.710(2), F.S
[6] s. 27.704(2), F.S
[7] *See* Comm'n on Capital Cases, Registry Attorneys, available at http://www.floridacapitalcases.state.fl.us/c-registry-attorney.cfm (last visited Feb. 24, 2006) and Comm'n on Capital Cases, Inmate Legal Status, available at http://www.floridacapitalcases.state.fl.us/c-inmate-status.cfm (last visited Feb. 24, 2006).
[8] There are, however, approximately seven registry attorneys who have caseloads above even seven cases, four more than eleven cases. *See* Comm'n on Capital Cases, Registry Attorneys, available at http://www.floridacapitalcases.state.fl.us/c-registry-attorney.cfm (last visited Feb. 24, 2006). http://www.floridacapitalcases.state.fl.us/c-members.cfm
[9] This paragraph also entitles an attorney to fees if the court schedules a hearing on a matter that makes the filing of the original motion for postconviction relief unnecessary or if the court otherwise disposes of the case; s. 27.704(4)(b), F.S.

- $4,000 after the appeal of the trial court's denial of the motion for postconviction relief and the state petition for writ of habeas corpus become final in the Florida Supreme Court;

- $2,500 at the conclusion of the defendant's postconviction capital collateral proceeding in state court and after filing a petition for writ of certiorari in the U.S. Supreme Court;

- $5,000 if at any time a death warrant is issued to compensate for attorneys fees and costs for representing the defendant throughout the proceedings before the state courts.

In addition, the attorney is authorized to hire an investigator at $40 per hour, up to a maximum of $15,000, to assist in the defendant's representation.[10] The attorney also is entitled to a maximum of $15,000 for miscellaneous expenses, such as the cost of preparing transcripts, compensating expert witnesses and copying documents, although the trial court may approve additional expenses if extraordinary circumstances exist.

The court is required to monitor the performance of assigned counsel to ensure that the capital defendant is receiving quality representation and must receive and evaluate allegations regarding the performance of assigned counsel.[11]

Fees in excess of statutory schedule

Although fees do not normally exceed the statutory schedule,[12] there have been 15 cases since the inception of the registry program where excess attorneys' fees totaling $356,755 were awarded.[13] There have been four cases where excess investigative fees totaling $21,806 were awarded.[14] There have been 20 cases where trial courts authorized additional miscellaneous expenses totaling $327,813.[15] These excess fee cases have occurred with increasing frequency over the last several years.[16]

Fees can exceed the statutory schedule based on court decisions such as the recent case of *Florida Department of Financial Services v. Freeman*[17], the Florida Supreme Court reaffirmed the holding of several prior cases that it is "within the trial judge's discretion to grant fees beyond the statutory maximum to registry counsel in capital collateral cases when 'extraordinary or unusual circumstances exist.'" In *Freeman*, the Department of Financial Services appealed an order from a circuit court granting a registry attorney, who had signed the required contract for services, fees in excess of the statutory maximum. The trial court had granted $27,940.74 in fees for services that were statutorily capped at $2,500. The *Freeman* opinion reviewed the court's prior holdings on the issue of fees in excess of statutory caps. In *Olive v. Maas*,[18] the court held that "fees in excess of the statutory cap are not always awarded to registry counsel in capital collateral cases; however, registry counsel is not foreclosed from requesting excess compensation 'should he or she establish that, given the facts and circumstances of a particular case, compensation within the statutory cap would be confiscatory of his or her time, energy and talent". The *Olive* court relied on the opinion of *Makemson v. Martin County*,[19] which related to compensation to attorneys representing capital defendants at the trial and during direct appeal.

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[10] s. 27.711(5), F.S.
[11] s. 27.711(12), F.S.
[12] Conversation, Executive Dir., Comm'n on Capital Cases (Feb. 24, 2006).
[13] Comm'n on Capital Cases, Payments in Excess of Statutory Caps Since Inception of the Registry Program (spreadsheet) (last updated Jan 31. 2006) (on file the comm'n).
[14] *Id.*
[15] *Id.*
[16] Conversation, Executive Dir., Comm'n on Capital Cases (Feb. 24, 2006).
[17] Florida Department of Financial Services v. Freeman, 2006 WL 176748 (Fla. January 26, 2006).
[18] *Olive v. Maas*, 811 So.2d 644 (Fla. 2002).
[19] 491 So.2d 1109 (Fla. 1986)

According to the *Freeman* court, the attorney requesting fees in excess of the statutory limits has the burden of establishing facts in support of the award. The Florida Supreme Court found that the record from the trial court provided "no evidence upon which the judge could rely to determine if extraordinary or unusual circumstances existed to support an award of excessive fees" and remanded the case back to the trial court for an evidentiary hearing.

Effect of HB 325

Continuing legal education: HB 325 amends s. 27.709, F.S., to authorize the Commission on Capital Cases to sponsor continuing legal education training devoted specifically to capital cases and to undertake any project recommended or approved by the commission members.

The bill also amends s. 27.710, F.S., to modify the continuing legal education (CLE) requirements for registry attorneys. Currently, the registry attorneys must attend 10 hours of CLE annually. The bill requires registry attorneys who are handling a capital case to attend at least 12 hours of CLE every two years.

Currently, an attorney who is actively representing a capital defendant is entitled to a maximum of $500 per fiscal year for tuition and expenses for continuing legal education that pertains to the representation of capital defendants. The bill amends s. 27.711, F.S., to clarify that a registry attorney is entitled to $500 for CLE expenses, regardless of how many capital defendants the attorney represents.

Qualifications: Currently, to be eligible for court appointment as counsel in postconviction proceedings, an attorney must certify that he or she satisfies the minimum experience and training requirements. As explained above, a registry attorney must have not less than three years experience in the practice of criminal law, and must have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five of these proceedings. These requirements are the same as those for the Capital Collateral Regional Counsel. The bill substantially modifies the minimum requirements for registry counsel in s. 27.710, F.S., by requiring a registry attorney to certify that he or she:

1. Is an active practitioner who has at least five years' experience in the practice of criminal law;
2. Is familiar with the production of evidence and the use of expert witnesses, including psychiatric and forensic evidence;
3. Has demonstrated proficiency necessary for representation in capital cases including the investigation and presentation of mitigation evidence;
4. Has satisfied the above CLE requirements;
5. Has tried at least nine state or federal criminal jury trials to completion, two of which must have been capital cases and
    a. Three of which must have been murder trials;
    b. One of which must have been a murder trial and five of which must have been other felony trials; or
    c. One of which must have included a postconviction evidentiary hearing and five of which must have been other felony trials
6. Alternatively, the attorney can certify that he or she has appealed one capital conviction and appealed at least:
    a. Three felony convictions, one of which must have been murder;
    b. Three felony convictions and participated in one capital postconviction evidentiary hearing; or
    c. Felony convictions, two of which must have been murders.

If the trial court finds that exceptional circumstances exist requiring appointment of an attorney who does not meet the criteria set forth above, the trial court must enter a written order specifying the exceptional circumstances requiring appointment of the attorney and explicit findings that the attorney chosen will provide competent representation in accordance with the intent of the section.

Failure to comply with criterion set forth in the section may be cause to remove the attorney from the registry until the criterion is satisfied. The bill provides that satisfaction of the minimum requirements must be proven by written notification to the commission. The certification requirement can be satisfied by submission of the application by electronic mail without a signature.

These changes are consistent with rule 3.112 of the Rules of Criminal Procedure, which were promulgated by the Florida Supreme Court to set minimum standards for attorneys in capital cases. These changes also are not expected to adversely impact the number of registry attorneys.[20]

Contracting: Currently, a private attorney who is appointed by the court to represent a capital defendant must enter into a contract with the Chief Financial Officer. If an attorney fails to execute the contract within 30 days after the date the contract is mailed to the attorney, the executive director of the commission must notify the trial court.

The bill allows the trial court to impose fines or removal from the case for failing to execute the required contract within 30 days after the contract is mailed to the attorney. The bill requires the executive director of the commission to remove an attorney from the registry for failing to execute the required contract within 45 days after the date the contract is mailed to the attorney. The bill prohibits an attorney from receiving any funds from the state treasury without executing the required contract.

Quarterly reporting: The bill also requires a registry attorney to agree to submit quarterly reports to the commission. If the attorney does not submit the required report within 30 days after the end of the quarter, the executive director must notify the court, which may impose a fine or remove the attorney from the case. If the attorney fails to submit the required report within 45 days after the end of the quarter, the executive director is required to remove the attorney from the registry list.

Effect of Removal from the Registry List: The bill gives the court the discretion to allow an attorney who has been removed from the registry to continue to represent any appointed clients as of the date of removal. The court, however, must take all necessary actions to ensure compliance with the contracting and reporting requirements. The bill also prohibits an attorney who has been removed from the registry from accepting appointment to represent any new capital defendants.

Return to the Registry List: The bill allows an attorney who has been removed from the registry list to certify that the attorney will comply with the contracting and reporting requirements and follow the original application procedures to be returned to the registry. An attorney is only eligible to reapply to the registry after removal two times.

Federal representation: The bill provides that if a registry attorney does not wish to continue representation in the federal courts, the attorney must make reasonable efforts to assist the defendant in finding replacement counsel who meets the federal requirements to represent a capital defendant in federal proceedings.

Payment: The bill also amends s. 27.711, F.S., to modify the payment schedule for registry attorneys. The bill authorizes payment of $100 per hour, up to a maximum of $20,000 after the final hearing on the capital defendant's motion for postconviction relief rather than when the trial court issues a final order granting or denying the defendant's motion. In some cases, judges take an extended amount of time in ruling on a postconviction motion after the evidentiary hearing – this provision will authorize payment to the attorney sooner. The bill authorizes payment of $100 per hour, up to a maximum of $2,500 for the preparation of an initial federal pleading rather than after filing a petition for writ of certiorari in the United States Supreme Court.

[20] Conversation, Executive Dir., Comm'n on Capital Cases (Feb. 24, 2006).

The bill provides that an attorney who is appointed by a court to represent a capital defendant on a pro bono basis is not entitled to attorney's fees, but is entitled to payment, from the appropriation for the registry, for specified investigative services and specified miscellaneous expenses actually incurred on behalf of the defendant. The bill prohibits any payment to any lawyer who volunteers to represent a defendant on a pro bono basis, if a registry lawyer has been appointed to represent the defendant.

The bill provides that if a trial court judge intends to award attorney fees in excess of those outlined in statute, the judge must include written findings of fact that specifically state the extraordinary nature of the expenditures of the time, energy, and talents of the attorney in the case which are not ordinarily expended in other capital collateral cases. The bill also amends s. 27.7001, F.S., to provide that the Legislature finds that not all capital collateral cases are extraordinary or unusual.

Limitation on number of inmates represented: The bill authorizes a registry attorney to represent up to seven inmates in capital postconviction litigation at any one time rather than only five inmates. The seven-inmate-representation limit includes capital postconviction cases proceeding under contract with the capital collateral regional counsel[21], inmates represented pro bono and inmates privately retaining the attorney. An attorney may not be appointed to additional capital postconviction cases until the attorney's representation total falls below the seven-case limit.

C. SECTION DIRECTORY:

Section 1. Amends s. 27.7001, F.S., to provide legislative findings.

Section 2. Amends s. 27.709, F.S., to authorize the Commission on Capital Cases to sponsor continuing legal education programs.

Section 3. Amends s. 27.710, F.S., to change the criteria for registry attorneys; to require quarterly reporting to commission; and to authorize executive director to remove attorney from registry in certain circumstances.

Section 4. Amends s. 27.711, F.S., to modify payment schedule for registry attorneys.

Section 5. Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate revenues of state government.

2. Expenditures:

   Allowing pro bono attorney expenses to be paid from funds appropriated for registry attorneys will increase expenditure requirements. The impact is indeterminate since it is impossible to predict how many defendants will be represented by pro bono attorneys once the bill takes effect. The House proposed General Appropriations Act contains an additional $900,000 of recurring General Revenue in the category designated for registry attorneys.

   Also see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[21] Section 27.704(2), F.S. authorizes the CCRC to contact with private counsel or with public defenders to provide representation to death sentenced inmates.

1. Revenues:

   This bill does not appear to create, modify, amend, or eliminate revenues of local governments.

2. Expenditures:

   This bill does not appear to create, modify, amend, or eliminate expenditures of local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Court-appointed capital collateral counsel should receive certain fees more quickly than under current law, in that the bill provides for payment after the final hearing on the original motion for postconviction relief, rather than upon the issuance of the court's order on the motion. Further, costs incurred by an attorney who has taken a capital collateral case on a pro bono basis may be paid by the Chief Financial Officer, upon approval of the court.

Increasing the required qualifications to be listed on the registry maintained by the Commission on Capital Cases will likely preclude attorneys who are now eligible to be listed on the registry from appointment through the registry.

Increasing the number of cases that a private registry attorney can handle from five to seven cases will allow these attorneys to increase their billings to the state.

D. FISCAL COMMENTS:

There could be a short-term, cash-flow impact on the state from the requirement that attorneys be paid for certain events more quickly than under current practice. This would not, however, increase overall costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   There do not appear to be any constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Criminal Justice Committee

The Criminal Justice Committee adopted a strike-all amendment which:

- Changed the statutory limit on the number of inmates that a registry attorney is authorized to represent from ten to seven. [The current statutory limit is five.]

- Modified the minimum qualifications for registry attorneys.
- Authorized a judge to impose a fine or remove an attorney from the registry if the attorney does not submit a required quarterly report.

Governmental Operations Committee

At its meeting on March 8, 2006, the Governmental Operations Committee adopted two amendments and reported the bill favorably with committee substitute:

Amendment 1 revised the provisions related to the failure by an appointed attorney to execute the required contract or to submit the required reports, added provisions addressing the effect of removing an attorney from the registry list, and provided a process by which an attorney could return to the registry list.

Failure to Execute the Required Contract

The amendment allows a court to impose fines or removal for failing to execute the required contract within 30 days after the contract is mailed to the attorney. Rather than immediate removal from the registry after 30 days as provided in the committee substitute, the amendment provides for removal by the executive director after 45 days. The amendment also prohibits an attorney who has failed to execute a contract from receiving any funds from the state treasury.

Failure to Submit the Required Reports

The amendment continues to allow a court to impose fines or removal for failing to submit the required report within 30 days after the end of the quarter. Rather than immediate removal from the registry after 30 days, the amendment provides for removal by the executive director after 45 days.

Effect of Removal

The amendment gives a court the discretion to allow an attorney who has been removed from the registry to continue to represent any appointed clients as of the date of removal, but requires the court to take all necessary actions to ensure compliance with the contracting and reporting requirements. The amendment prohibits an attorney who has been removed from the registry from accepting appointment to represent any new capital defendants.

Return to the Registry

The amendment allows an attorney who has been removed from the registry to certify that the attorney will comply with the contracting and reporting requirements and to follow the original application procedures to be returned to the registry; an attorney is only eligible to reapply to the registry after removal two times.

Amendment 2 revised the provisions related to the payment of costs incurred during pro bono representation of capital defendants.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Commission on Capital Cases; amending s. 27.7001, F.S.; providing legislative findings; amending s. 27.709, F.S.; authorizing the Commission on Capital Cases to sponsor continuing legal education programs devoted specifically to capital cases; amending s. 27.710, F.S.; specifying criteria that a private attorney must satisfy in order to be eligible to be appointed as counsel in a postconviction capital collateral proceeding; providing that a judge may appoint an attorney who does not meet the appointment criteria if exceptional circumstances exist; providing that an attorney may be removed from the capital collateral registry if the attorney does not meet the criteria; directing the executive director of the commission to remove an attorney from the registry if the attorney fails to timely file an executed contract; requiring a private attorney appointed by a court to represent a capital defendant to submit a report each quarter to the

commission; requiring the executive director to notify the trial court and remove an attorney from the registry if the attorney does not submit the report within a specified time; authorizing the commission to return a removed attorney to the registry; requiring that an attorney make reasonable efforts to assist the person under a sentence of death in finding an attorney under certain circumstances; amending s. 27.711, F.S.; requiring that certain costs incurred during pro bono representation of a capital defendant be paid to the attorney; providing that an attorney who is listed on the registry and representing at least one capital defendant is entitled to tuition and expenses for continuing legal education courses; providing that an attorney may represent no more than seven inmates in capital postconviction cases at any one time; requiring that, if a trial court judge intends to award attorney's fees in excess of those set by law, the judge must include written findings of fact specifically stating the extraordinary nature of the expenditures of the time, energy, and talents of the attorney in the case that are not ordinarily expended in other capital collateral cases; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 27.7001, Florida Statutes, is amended to read:

27.7001 Legislative intent and findings.--It is the intent of the Legislature to create part IV of this chapter, consisting of ss. 27.7001-27.711, inclusive, to provide for the collateral representation of any person convicted and sentenced to death in this state, so that collateral legal proceedings to challenge any Florida capital conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice. It is the further intent of the Legislature that collateral representation shall not include representation during retrials, resentencings, proceedings commenced under chapter 940, or civil litigation. The Legislature further finds that not all capital collateral cases are extraordinary or unusual.

Section 2. Paragraph (d) is added to subsection (2) of section 27.709, Florida Statutes, to read:

27.709 Commission on Capital Cases.--

(2)

(d) The commission may sponsor programs of continuing legal education which are devoted specifically to capital cases and shall undertake any project recommended or approved by the commission members.

Section 3. Section 27.710, Florida Statutes, is amended to read:

27.710 Registry of attorneys applying to represent persons in postconviction capital collateral proceedings; certification of minimum requirements; appointment by trial court.--

(1) The executive director of the Commission on Capital Cases shall compile and maintain a statewide registry of attorneys in private practice who have certified that they meet the ~~minimum~~ requirements of this section and ~~s. 27.704(2),~~ who are available for appointment by the court under this section to represent persons convicted and sentenced to death in this state in postconviction collateral proceedings~~, and who have attended within the last year a continuing legal education program of at least 10 hours' duration devoted specifically to the defense of capital cases, if available. Continuing legal education programs meeting the requirements of this rule offered by The Florida Bar or another recognized provider and approved for continuing legal education credit by The Florida Bar shall satisfy this requirement. The failure to comply with this requirement may be cause for removal from the list until the requirement is fulfilled~~. To ensure that sufficient attorneys are available for appointment by the court, when the number of attorneys on the registry falls below 50, the executive director shall notify the chief judge of each circuit by letter and request the chief judge to promptly submit the names of at least three private attorneys who regularly practice criminal law in that circuit and who appear to meet the minimum requirements to represent persons in postconviction capital collateral proceedings. The executive director shall send an application to each attorney identified by the chief judge so that the attorney may register for appointment as counsel in postconviction capital collateral proceedings. As necessary, the executive director may also advertise in legal publications and other appropriate media for

qualified attorneys interested in registering for appointment as counsel in postconviction capital collateral proceedings. Not later than September 1 of each year, and as necessary thereafter, the executive director shall provide to the Chief Justice of the Supreme Court, the chief judge and state attorney in each judicial circuit, and the Attorney General a current copy of its registry of attorneys who are available for appointment as counsel in postconviction capital collateral proceedings. The registry must be indexed by judicial circuit and must contain the requisite information submitted by the applicants in accordance with this section.

(2)(a) To be eligible for court appointment as counsel in postconviction capital collateral proceedings, an attorney must certify on an application provided by the executive director that he or she is a member in good standing of The Florida Bar and:

1. Is an active practitioner who has at least 5 years' experience in the practice of criminal law, is familiar with the production of evidence and the use of expert witnesses, including psychiatric and forensic evidence, and has demonstrated the proficiency necessary for representation in capital cases, including the investigation and presentation of mitigation evidence;

2. Has attended a minimum of 12 hours of continuing legal education programs within the previous 2 years which were devoted to the defense of capital cases and offered by The Florida Bar or another recognized provider of continuing legal education courses; and

3.a. Has tried at least nine state or federal jury trials to completion, two of which must have been capital cases and:

(I) Three of which must have been murder trials;

(II) One of which must have been a murder trial and five of which must have been other felony trials; or

(III) One of which must have included a postconviction evidentiary hearing and five of which must have been other felony trials; or

b. Has appealed one capital conviction and appealed:

(I) At least three felony convictions, one of which must have been a murder;

(II) At least three felony convictions and participated in one capital postconviction evidentiary hearing; or

(III) At least six felony convictions, two of which must have been murders.

(b) If the trial court finds that exceptional circumstances exist requiring appointment of an attorney who does not meet the criteria set forth in paragraph (a), the trial court shall enter a written order specifying the exceptional circumstances requiring appointment of the attorney and explicit findings that the attorney chosen will provide competent representation in accordance with the intent of this section.

(c) A failure to comply with any criterion set forth in paragraph (a) may be cause to remove the attorney from the registry until the criterion is satisfied.

(d) Satisfaction of the criterion may be proven by submitting a written certification to the commission. The certification is complete upon submission of the application by

electronic mail without a signature ~~satisfies the minimum requirements for private counsel set forth in s. 27.704(2)~~.

(3) An attorney ~~who applies for registration and court appointment as counsel in postconviction capital collateral proceedings must certify that he or she is counsel of record in not more than four such proceedings and, if~~ appointed to represent a person in postconviction capital collateral proceedings~~,~~ shall continue the ~~such~~ representation under the terms and conditions set forth in s. 27.711 until the sentence is reversed, reduced, or carried out or unless permitted to withdraw from representation by the trial court. The court may not permit an attorney to withdraw from representation without a finding of sufficient good cause. The court may impose appropriate sanctions if it finds that an attorney has shown bad faith with respect to continuing to represent a defendant in a postconviction capital collateral proceeding. This section does not preclude the court from reassigning a case to a capital collateral regional counsel following discontinuation of representation if a conflict of interest no longer exists with respect to the case.

(4)(a) Each private attorney who is appointed by the court to represent a capital defendant must enter into a contract with the Chief Financial Officer. If the appointed attorney fails to execute the contract within 30 days after the date the contract is mailed to the attorney, the executive director of the Commission on Capital Cases shall notify the trial court, which may impose a fine or remove the attorney from the case. If the appointed attorney fails to execute the contract within 45 days

after the date the contract is mailed to the attorney, the executive director shall remove the attorney from the registry list. The Chief Financial Officer shall develop the form of the contract, function as contract manager, and enforce performance of the terms and conditions of the contract. By signing such contract, the attorney certifies that he or she intends to continue the representation under the terms and conditions set forth in the contract until the sentence is reversed, reduced, or carried out or until released by order of the trial court. In no event shall an attorney receive any funds from the State Treasury without executing the contract required by this paragraph.

(b) Each private attorney appointed by a court to represent a capital defendant shall submit a report each quarter to the commission in the format designated by the commission. If the attorney does not submit the report within 30 days after the end of the quarter, the executive director shall notify the court, which may impose a fine or remove the attorney from the case. If the attorney fails to submit the report within 45 days after the end of the quarter, the executive director shall remove the attorney from the registry list.

(c) Any appointed attorney removed from the registry may, at the discretion of the court, continue to represent any clients that the attorney has been appointed to represent as of the date of removal. If the court allows an attorney who has been removed from the registry to continue to represent previously appointed capital defendants, the court shall take all necessary actions to ensure compliance with the requirements

of this subsection. An attorney who has been removed from the registry is prohibited from accepting appointment to represent any new capital defendants unless the attorney is placed back on the registry as provided in paragraph (d).

(d) After certifying to the executive director that he or she will act in accordance with the provisions of this subsection, an attorney removed from the registry may, after 60 days, reapply for the registry as provided in subsection (2). An attorney may reapply for the registry no more than two times under the provisions of this paragraph for failure to adhere to the requirements of this subsection.

(5)(a) Upon the motion of the capital collateral regional counsel to withdraw under ~~pursuant to~~ s. 924.056(1)(a); or

(b) Upon notification by the state attorney or the Attorney General that:

1. Thirty days have elapsed since appointment of the capital collateral regional counsel and no entry of appearance has been filed under ~~pursuant to~~ s. 924.056; or

2. A person under sentence of death who was previously represented by private counsel is currently unrepresented in a postconviction capital collateral proceeding,

the executive director shall immediately notify the trial court that imposed the sentence of death that the court must immediately appoint an attorney, selected from the current registry, to represent the ~~such~~ person in collateral actions challenging the legality of the judgment and sentence in the appropriate state and federal courts. If the attorney appointed

to represent a person under a sentence of death does not wish to continue representing the person in federal proceedings, the attorney must make reasonable efforts to assist the person in finding an attorney who meets the federal criteria to represent the person in any federal proceedings. The court shall have the authority to strike a notice of appearance filed by a Capital Collateral Regional Counsel, if the court finds the notice was not filed in good faith and may so notify the executive director that the client is no longer represented by the Office of Capital Collateral Regional Counsel. In making an assignment, the court shall give priority to attorneys whose experience and abilities in criminal law, especially in capital proceedings, are known by the court to be commensurate with the responsibility of representing a person sentenced to death. The trial court must issue an order of appointment which contains specific findings that the appointed counsel meets the statutory requirements and has the high ethical standards necessary to represent a person sentenced to death.

(6) More than one attorney may not be appointed and compensated at any one time under s. 27.711 to represent a person in postconviction capital collateral proceedings. However, an attorney appointed under this section may designate another attorney to assist him or her if the designated attorney meets the qualifications of this section.

Section 4. Subsections (3), (4), (7), and (9) of section 27.711, Florida Statutes, are amended, and subsection (15) is added to that section, to read:

27.711 Terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.--

(3) An attorney appointed to represent a capital defendant is entitled to payment of the fees set forth in this section only upon full performance by the attorney of the duties specified in this section and approval of payment by the trial court, and the submission of a payment request by the attorney, subject to the availability of sufficient funding specifically appropriated for this purpose. An attorney may not be compensated under this section for work performed by the attorney before July 1, 2003, while employed by the northern regional office of the capital collateral counsel. The Chief Financial Officer shall notify the executive director and the court if it appears that sufficient funding has not been specifically appropriated for this purpose to pay any fees which may be incurred. The attorney shall maintain appropriate documentation, including a current and detailed hourly accounting of time spent representing the capital defendant. The fee and payment schedule in this section is the exclusive means of compensating a court-appointed attorney who represents a capital defendant. When appropriate, a court-appointed attorney must seek further compensation from the Federal Government, as provided in 18 U.S.C. s. 3006A or other federal law, in habeas corpus litigation in the federal courts. An attorney who is appointed by a court to represent a capital defendant on a pro bono basis shall not be entitled to attorney's fees as provided in subsection (4), but shall be entitled to payment by the Chief Financial Officer from the registry appropriation for

investigative services as specified in subsection (5) and for miscellaneous expenses actually incurred on behalf of the defendant as specified in subsection (6). If a registry attorney has been appointed to represent a defendant, no payment shall be made to any other attorney who volunteers to represent the same defendant on a pro bono basis.

(4) Upon approval by the trial court, an attorney appointed to represent a capital defendant under s. 27.710 is entitled to payment of the following fees by the Chief Financial Officer:

(a) Regardless of the stage of postconviction capital collateral proceedings, the attorney is entitled to $100 per hour, up to a maximum of $2,500, after accepting appointment and filing a notice of appearance.

(b) The attorney is entitled to $100 per hour, up to a maximum of $20,000, after timely filing in the trial court the capital defendant's complete original motion for postconviction relief under the Florida Rules of Criminal Procedure. The motion must raise all issues to be addressed by the trial court. However, an attorney is entitled to fees under this paragraph if the court schedules a hearing on a matter that makes the filing of the original motion for postconviction relief unnecessary or if the court otherwise disposes of the case.

(c) The attorney is entitled to $100 per hour, up to a maximum of $20,000, after the final hearing on ~~trial court issues a final order granting or denying~~ the capital defendant's motion for postconviction relief.

(d) The attorney is entitled to $100 per hour, up to a maximum of $20,000, after timely filing in the Supreme Court the capital defendant's brief or briefs that address the trial court's final order granting or denying the capital defendant's motion for postconviction relief and the state petition for writ of habeas corpus.

(e) The attorney is entitled to $100 per hour, up to a maximum of $10,000, after the trial court issues an order, following ~~pursuant to~~ a remand from the Supreme Court, which directs the trial court to hold further proceedings on the capital defendant's motion for postconviction relief.

(f) The attorney is entitled to $100 per hour, up to a maximum of $4,000, after the appeal of the trial court's denial of the capital defendant's motion for postconviction relief and the capital defendant's state petition for writ of habeas corpus become final in the Supreme Court.

(g) At the conclusion of the capital defendant's postconviction capital collateral proceedings in state court, the attorney is entitled to $100 per hour, up to a maximum of $2,500, for the preparation of the initial federal pleading ~~after filing a petition for writ of certiorari in the Supreme Court of the United States~~.

(h) If, at any time, a death warrant is issued, the attorney is entitled to $100 per hour, up to a maximum of $5,000. This payment shall be full compensation for attorney's fees and costs for representing the capital defendant throughout the proceedings before the state courts of Florida.

The hours billed by a contracting attorney under this subsection may include time devoted to representation of the defendant by another attorney who is qualified under s. 27.710 and who has been designated by the contracting attorney to assist him or her.

(7) Each registry ~~An~~ attorney who is representing at least one capital defendant ~~actively representing a capital defendant~~ is entitled to a maximum of $500 per fiscal year for tuition and expenses for continuing legal education that pertains to the representation of capital defendants, regardless of the total number of capital defendants the attorney is representing. Upon approval by the trial court, the attorney is entitled to payment by the Chief Financial Officer for expenses for such tuition and continuing legal education.

(9) An attorney may not represent more than seven inmates ~~five defendants~~ in capital postconviction litigation at any one time. The seven-inmate-representation limit includes capital postconviction cases proceeding under contract with the capital collateral regional counsel, inmates represented pro bono, and inmates privately retaining the attorney. An attorney may not be appointed to additional capital postconviction cases until the attorney's representation total falls below the seven-case limit.

(15) If a trial court judge intends to award attorney fees in excess of those outlined in this section, the judge must include written findings of fact that specifically state the extraordinary nature of the expenditures of the time, energy,

and talents of the attorney in the case that are not ordinarily expended in other capital collateral cases.

Section 5. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 585 CS Inmate Litigation Costs
SPONSOR(S): Hukill
TIED BILLS: **IDEN./SIM. BILLS:** SB 1622

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Cunningham	Kramer
2) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Rule 33-210.102, F.A.C., entitled "Legal Documents and Legal Mail," requires the Department of Corrections to furnish postage for mail to courts and attorneys and for pleadings to be served upon each of the parties to a lawsuit for those inmates who have insufficient funds to cover the cost.

Rule 33-501.302, F.A.C., entitled "Copying Services for Inmates," outlines how photocopying will be conducted in prison institutions. Currently, section (4) of the rule states that the Department of Corrections may charge $.15 per page for copies, while section (5) authorizes the Department of Corrections to collect the cost of providing copies from an inmate's trust fund account. In 2004, the First District Court of Appeal held that the above sections of Rule 33-501.302, F.A.C., were invalid because they were not supported by a specific grant of legislative authority.

This bill creates a specific grant of legislative authority for the Department of Corrections to charge inmates for certain services (copying and postage), to place liens on an inmate's trust fund account to collect the cost of such services, and to adopt rules relative thereto. This bill would likely negate the effect of the First District Court of Appeals' decision.

See "Fiscal" section for fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Increase personal responsibility → This bill requires inmates to pay costs of certain services provided on their behalf.

B. EFFECT OF PROPOSED CHANGES:

Currently, the Department of Corrections (Department) has statutory authority to accept and administer as a trust any money or other property received for the personal use or benefit of any inmate.[1] These "inmate trust fund accounts" are generally used by inmates for canteen purchases and other expenses. The Department, as trustee, is also entitled to use (i.e. withdraw, deposit, invest, commingle, etc...) funds contained in an inmate's trust fund account in certain circumstances.[2]

Postage

Currently, the Department has the authority to adopt rules relating to mail to and from inmates, including rules specifying the circumstances under which an inmate must pay for the cost of postage for mail that the inmate sends.[3] The department may not adopt a rule that requires an inmate to pay any postage costs that the state is constitutionally required to pay.[4] In 1976, the Department promulgated rule 33-210.102, F.A.C., which provides:

> The institution shall furnish postage for mail to courts and attorneys and for pleadings to be served upon each of the parties to a lawsuit for those inmates who have insufficient funds to cover the cost of mailing the documents at the time the mail is submitted to the mailroom, but not to exceed payment for the original and two copies except when additional copies are legally required.

Although the above rule provides that the Department is required to pay for postage for legal mail for inmates who have insufficient funds, the rule does not specify that the Department may charge an inmate for such service nor does it authorize the Department to place a lien upon the inmate's trust fund account for postage costs.

Copying Costs

In 1983, in response to federal court decisions involving an inmate's federal constitutional right of access to the courts, rule 33-501.302, F.A.C., entitled "Copying Services for Inmates", was promulgated.[5] The rule currently contains seven sections that outline how photocopying will be conducted in prison institutions.[6] Pertinent to the proposed legislation is section (4), which states that "inmates will be charged $0.15 per page for standard legal or letter size copies, or if special equipment or paper is required, the institution is authorized to charge up to the estimated actual cost of making the copies."[7] Additionally, section (5) provides that:

> "Inmates who are without funds shall not be denied copying services for documents and accompanying evidentiary materials needed to initiate a legal or

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[1] s. 944.516, F.S.
[2] *Id.*
[3] s. 944.09, F.S.
[4] *Id.*
[5] *Smith v. Fl. Dept. of Corrections*, 30 Fla. L. Weekly D1299 (Fla. 1st DCA May 23, 2005).
[6] *See* Rule 33-501.302, F.A.C.
[7] *Id.*

administrative action or which must be filed or served in a pending action that challenges convictions and sentences or prison conditions, or are required to be filed or served per order of the court or administrative body. However, the cost of providing copies for documents to be filed or served is a debt owed by the inmate that shall be collected as follows: At the time the inmate submits his request for copies, the department shall place a hold on the inmate's account for the estimated cost of providing the copies. The cost of providing the copies shall be collected from any existing balance in the inmate's bank trust fund account. If the account balance is insufficient to cover the cost, the account shall be reduced to zero. If costs remain unpaid, a hold will be placed on the inmate's account and all subsequent deposits to the inmate's account will be applied against the unpaid costs until the debt has been paid."[8]

In past years, the Department of Corrections has used the above authority to charge inmates for copying costs related to litigation. However, in 2004, a Department inmate filed an appeal with Florida's First District Court of Appeal seeking to have the above sections of Rule 33-501.302, F.A.C., declared invalid.[9] Specifically, the inmate alleged that the portions of the rule establishing the amount to be charged prison inmates for photocopying services and authorizing deductions from and liens imposed upon inmate trust accounts to cover incurred costs for photocopying services were invalid because they exceeded the Legislature's grant of rulemaking authority to the Department.[10] The Department argued that ss. 20.315[11], 945.04[12], and 944.09[13] F.S., provided statutory authority for the rule.[14] The court held that because none of the statutes cited by the Department contained a specific grant of legislative authority authorizing the Department to charge for copies and to place liens in inmate accounts,[15] those portions of the rule exceeded the legislature's grant of rulemaking authority to the Department and were thus invalid.[16]

This bill requires the Department to charge an inmate for:

- costs of duplication of documents and accompanying evidentiary materials needed to *initiate* proceedings in judicial or administrative forums,
- costs of duplication of documents and accompanying evidentiary materials which must be filed or served in a *pending* judicial or administrative proceeding,
- postage and any special delivery charges, if required by law or rule, for mail to courts, attorneys, parties, and other persons required to be served.

The bill authorizes the following copying fees:

- up to $.15 per one-sided copy for documents no bigger than 14 x 8 ½ inches,
- for all other copies, the actual cost of duplication.

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[8] *Id.*
[9] *See Smith* at 1.
[10] *Id.*
[11] s. 20.315, F.S., creates the Department of Corrections and defines its organizational structure and purpose. Among the listed goals of the Department is the duty to ensure that inmates work while they are incarcerated and that the Department make every effort to collect restitution and other monetary assessments from inmates while they are incarcerated or under supervision.
[12] s. 945.04, F.S., sets forth the general functions of the Department. In 2004, the Department amended rule 33-501.302, F.A.C., deleting the reference to s. 945.04, F.S., as statutory authority for the rule, and replaced it with a citation to s. 944.09, F.S.
[13] s. 944.09, F.S., sets forth the general rulemaking authority of the Department with regard to, among other things, the rights of inmates, the operation and management of the correctional institution or facility and its personnel and functions, visiting hours and privileges, and the determination of restitution.
[14] *See Smith* at 3.
[15] Section 120.52, F.S., provides standards to be used when determining whether a particular rule constitutes an invalid exercise of legislative authority. The court in *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1st DCA 2000) interpreted these standards and held that the question is "whether the statute contains a specific grant of legislative authority for the rule."
[16] *See Smith* at 4-5. A petition for review is currently pending before the Florida Supreme Court.

The bill also requires the Department to place a lien on the inmate's trust fund account if the inmate does not have sufficient funds at the time the charges are imposed and to adopt rules to implement the bill's provisions.

By creating a statute that specifically requires the Department to charge inmates for copies and postage, place liens upon an inmate's trust fund account, and adopt rules to implement these functions, this bill would likely negate the effect of the decision in the *Smith* case.

C. SECTION DIRECTORY:

Section 1. Creates s. 945.6038, F.S., requiring the Department of Corrections to charge inmates for specified costs relating to inmate litigation and to place liens on inmate trust fund accounts; requiring the Department to adopt rules.

Section 2. This act takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Prior to the 1st DCA's ruling, the Department collected approximately $150,000 annually for legal copies and postage. Since the 1st DCA's ruling, the Department does not have the authority to make these collections. This bill would give the Department the authority to make such collections.

The Department states that they have accumulated nearly $800,000 in liens against inmates over a six-year period. Since the 1st DCA's ruling, the Department does not have the authority to collect these funds. This bill would give the Department the authority to collect these funds.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In its analysis of this bill, the Department states that the photocopying rule helped in preventing inmate's from filing frivolous lawsuits. Now that the 1st DCA has deemed the rule invalid, the Department anticipates that more frivolous lawsuits will be filed. This bill would authorize the Department to effectively reinstate the photocopying rule, thus helping prevent the filing of frivolous lawsuits.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Prisoner's Right of Access to the Courts

The federal constitution does not contain a specific clause providing an inmate a right of access to courts. Nonetheless, the United States Supreme Court has held that there is such a right arising from several constitutional provisions including the First Amendment, the Due Process Clause, and the Equal Protection Clause.[17] In reaching this conclusion, the Supreme Court stated, in dicta, that "[i]t is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents[,] with notarial services to authenticate them, and with stamps to mail them."[18] Inmates nationwide used this dicta to argue that that the federal constitutional right of access to the courts required the provision of free and unlimited photocopies for purposes of litigation.[19] Federal courts disagree and have held that although the right of access to courts requires that an inmate be provided access to photocopying services, inmates may be charged a fee for such services.[20]

Florida's constitution specifically guarantees a citizen's access to courts.[21] As such, the Florida constitution grants inmates a right of access to the courts that is broader than the federal constitution.[22] Florida courts have recognized this difference, but nevertheless have held that it is "unlikely that inmate access to photocopying services would need to be greater that that required by the federal right in order to conform to the broader state constitutional right of access to the courts."[23]

The bill requires the Department to charge inmates for photocopying services and postage and to place liens on inmate accounts. The bill does not deny indigent inmates photocopying services or postage. Given the above, it does not appear that the bill would violate an inmate's federal or state constitutional right of access to courts.

B. RULE-MAKING AUTHORITY:

This bill provides a general grant of rulemaking power to the Department of Corrections to implement the bill's provisions (lines 24-25). The bill appears to give sufficient rule making authority that is appropriately limited.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[17] *See Bounds v. Smith,* 430 U.S. 817, 825 (1977) ("It is now established beyond doubt that prisoners have a constitutional right of access to the courts.").
[18] *Id.*
[19] *See Smith* at 1.
[20] *See, e.g., Allen v. Sakai*, 48 F.3d 1082 (9th Cir. 1995); *see also Johnson v. Moore*, 948 F.2d 517 (9th Cir. 1991).
[21] *See* Art. I, s. 21, Fla. Const.
[22] *See Henderson v. Crosby*, 883 So.2d 847, 850-854 (Fla. 1st DCA 2004).
[23] *Smith* at 5; *see also Henderson* at 857, ("We cannot conceive that the access-to-courts provision was intended to require the state to provide inmates with mechanical equipment to facilitate their research and preparation of legal papers.").

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Criminal Justice Committee adopted one amendment to the bill and reported the bill favorably with committee substitute. The amendment *requires* (instead of *authorizes*) the Department of Corrections to charge inmates for specified costs relating to inmate litigation, place liens on inmate trust fund accounts, and adopt rules relating thereto. Additionally, the amendment authorizes specific copying costs and provides that the Department must charge inmates for postage costs to courts, attorneys, parties, and other persons required to be served.

CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to inmate litigation costs; creating s. 945.6038, F.S.; requiring the Department of Corrections to charge inmates for specified costs relating to inmate litigation; authorizing liens on inmate trust funds; requiring rulemaking; providing intent; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 945.6038, Florida Statutes, is created to read:

945.6038 Inmate litigation costs.--

(1) The department shall charge an inmate for the following and place a lien on the inmate's trust fund account if the inmate has insufficient funds at the time the charges are imposed:

(a) Costs of duplication of documents and accompanying evidentiary materials needed to initiate proceedings in judicial

or administrative forums or that must be filed or served in a pending proceeding. The following costs are authorized:

1. Up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8 1/2 inches; or

2. For all other copies, the actual cost of duplication.

(b) Postage and any special delivery charges, if required by law or rule, for mail to courts, attorneys, parties, and other persons required to be served.

(2) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

(3) This section is not intended to create any legal rights or obligations that do not otherwise exist. This section is not intended to limit or preclude the department from charging for duplication of its records as allowed under chapter 119, nor is it intended to create a right to substitute a lien in lieu of payment for public records.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 761 Trespass on the Property of a Certified Domestic Violence Center
SPONSOR(S): Carroll
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Ferguson	Kramer
2) Future of Florida's Families Committee	7 Y, 0 N	Preston	Collins
3) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
4) Justice Council			
5)			

SUMMARY ANALYSIS

Trespass is the unauthorized entry onto the property of another. In prosecuting trespass, the state must prove that the offender knew, or should have known, that entry onto the property is unauthorized.

The bill amends section 810.09, F.S., to increase criminal penalties for trespassing upon a domestic violence center from a first degree misdemeanor to a third degree felony.

The Criminal Justice Impact Conference reviewed this bill on February 28, 2006, and determined that it would have an insignificant fiscal impact.

The effective date of this bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – This bill increases criminal penalties for trespassing upon a domestic violence center from a first degree misdemeanor to a third degree felony.

B. EFFECT OF PROPOSED CHANGES:

Background

According to the Florida Department of Children and Families, "domestic violence is a pattern of behaviors that adults or adolescents use against their intimate partners or former partners to establish power and control. It may include physical abuse, sexual abuse, emotional abuse, and economic abuse. It may also include threats, isolation, pet abuse, using children and a variety of other behaviors used to maintain fear, intimidation and power over one's partner. Domestic violence knows no boundaries. It occurs in intimate relationships, regardless of race, religion, culture or socioeconomic status."[1]

Domestic violence centers

In 1998, "the Legislature recognize[d] that certain persons who assault, batter, or otherwise abuse their spouses and the persons subject to such domestic violence are in need of treatment and rehabilitation. It is the intent of the Legislature to assist in the development of domestic violence centers for the victims of domestic violence and to provide a place where the parties involved may be separated until they can be properly assisted."[2]

A domestic violence center is defined as an agency that provides services to victims of domestic violence, as its primary mission.[3]

Section 741.28, F.S., defines "domestic violence" as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

Section 741.28, F.S., defines "family or household member" to mean spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

Effect of bill

Section 810.09, F.S., currently provides that it is a first degree misdemeanor to commit trespass on lands.[4] The offense level is increased to a third degree felony in certain circumstances. For example, it is a third degree felony if the offender is armed during the trespass; if the property trespassed is a posted construction site; if the property is posted as commercial property designated for horticultural

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[1] Information found at http://www.dcf.state.fl.us/domesticviolence/whatisdv.shtml
[2] See section 39.901, F.S.
[3] *See* section 39.902(2), F.S.
[4] Trespass in a dwelling, structure or conveyance is considered a more serious offense.

products; if the property trespassed is posted as a designated agricultural site for testing or research purposes; or if a person knowingly propels any potentially lethal projectile over or across private land without authorization while taking, killing, or endangering specified animals.[5]

HB 761 amends section 810.09, F.S., to increase criminal penalties from a first degree misdemeanor to a third degree felony for trespassing upon a domestic violence center.[6] In order for the felony penalties to apply, the domestic violence center must be certified under section 39.905, F.S. and must be legally posted and identified in substantially the following manner: THIS AREA IS A DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.

C. SECTION DIRECTORY:

Section 1. Amends section 810.09, F.S., to provide criminal penalties for trespassing on a domestic violence center.

Section 2. Provides an effective date of July 1, 2006

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Criminal Justice Impact Conference met on February 28, 2006 to consider the prison bed impact of this bill. The conference determined that it would have an insignificant prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

[5] See s. 810.09(2)(a)-(g), F.S.

[6] As a result, the maximum penalty for the offense will be increased from one year in county jail to five years in prison. See section 775.082, F.S.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require municipalities or counties to expend funds or take action requiring the expenditure of funds and there are no provisions in the bill affecting state shared tax revenues. Therefore, the provisions of Article VII, section 18 of the state constitution do not apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to trespass on the property of a certified domestic violence center; amending s. 810.09, F.S.; providing that a person commits a felony of the third degree if he or she trespasses on the property of a certified domestic violence center; providing a penalty; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 810.09, Florida Statutes, is amended to read:

810.09 Trespass on property other than structure or conveyance.--

(2)(a) Except as provided in this subsection, trespass on property other than a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance, the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) If the offender is armed with a firearm or other

dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and that the person to be taken into custody and detained has committed or is committing the ~~such~~ violation. If ~~In the event~~ a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention in compliance with the requirements of this paragraph does not result in criminal or civil liability for false arrest, false imprisonment, or unlawful detention.

(d) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed is a construction site that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(e) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is commercial horticulture property and the property is legally posted and identified in substantially the following manner: "THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURE PRODUCTS, AND ANYONE WHO

TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(f) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is an agricultural site for testing or research purposes that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(g) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is a domestic violence center certified under s. 39.905 which is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(h) ~~(g)~~ Any person who in taking or attempting to take any animal described in s. 372.001(10) or (11), or in killing, attempting to kill, or endangering any animal described in s. 585.01(13) knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization commits trespass, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, the term "potentially lethal projectile" includes any projectile launched from any firearm, bow, crossbow, or similar tensile device. This section does ~~shall~~ not apply to any governmental agent or employee acting within the scope of his or her official duties.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 827 Pretrial Release
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** SB 2018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	8 Y, 0 N	Cunningham	Kramer
2) Criminal Justice Appropriations Committee		DeBeaugrine	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions. With certain exceptions, there is a presumption in favor of release on nonmonetary conditions. Additionally, courts *must* impose conditions requiring the defendant on pretrial release to refrain from criminal activity of any kind and to refrain from contact with the victim.

HB 827 requires judges who grant monetary bail to set a separate and specific bail amount for each charge. This bill also provides that defendants charged with a second or subsequent felony within three years after the date of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of release on nonmonetary conditions. This bill also provides that a court must require a defendant to comply with all conditions of pretrial release.

Bail, one of the most common monetary conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. As an alternative to posting bail, a defendant may employ the services of a bail bond agent who pledges that a defendant will appear at all scheduled proceedings before a court. If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond "forfeited." In cases where a bond has been forfeited and not paid or discharged by a court within 60 days, the court enters a judgment against the bail bond agent for the amount of the bond.

HB 827 amends statutes relating to bail bonds, specifically their forfeiture, judgment, and cancellation. Additionally, it clarifies that the original appearance bond does not guarantee a defendant's appearance after a defendant enters a guilty or nolo contendere plea, after a defendant is adjudicated guilty, after adjudication is withheld, and in other situations.

This bill takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security → This bill provides that a court must require persons on pretrial release to comply with all conditions of pretrial release; provides that a court must set a separate bail for each charged offense; provides that defendants charged with a second or subsequent felony within three years after the date of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of pretrial release on nonmonetary conditions; and requires courts to issue a capias or arrest warrant if a defendant on bond fails to appear.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Pretrial Release

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.[1] There is a presumption in favor of release on *nonmonetary* conditions[2] for any person who is granted pretrial release unless such person is charged with a dangerous crime.[3] Although courts have the authority to impose any number of pretrial release conditions, courts *must* impose conditions requiring the defendant to refrain from criminal activity of any kind and to refrain from contact with the victim.[4]

Bail Bonds

Bail, one of the most common monetary conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. As an alternative to posting bail, a defendant may employ the services of a bail bond agent.[5] A bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court.

Bail bond agents are licensed and regulated by the Department of Financial Services (DFS), pursuant to chapter 648, F.S. A bail bond agent may either be a limited surety agent who is appointed by a surety insurance company to execute or countersign bail bonds, or a professional bail bond agent who pledges his or her own funds as security for a bail bond. The chapter provides requirements for licensure of bail bond agents, limits the amount of premium and expenses which can be charged, restricts the types of collateral which can be demanded, and requires that such collateral be returned in a timely manner once the bond has been canceled.

Chapter 903, F.S., sets forth the requirements relating to bail and bail bonds, including all forms of pretrial release. After a defendant has been released on bail, the bail bond agent has the authority to

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[1] Conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130, Fla. R. Crim. Proc.
[2] Nonmonetary conditions include releasing defendants on their own recognizance. Rule 3.131(b)(1), Fla. R. Crim. Proc.
[3] "Dangerous crimes" include: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; and attempting or conspiring to commit any such crime. s. 907.041, F.S.
[4] s. 903.047, F.S.
[5] Section 648.25, F.S., defines "Professional bail bond agent" as any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

"surrender," or return, the defendant to the custody of the person who would have held the defendant absent the bail.[6] Ordinarily, a bail bond agent will do this if the bail bond agent believes the defendant is a flight risk or if the collateral provided for bail is discovered to be insufficient. Upon surrender, the official taking custody of the defendant will issue a certificate acknowledging the surrender.[7] The bail bond agent then can present the certificate and bond to the court which will issue an order exonerating the obligors and refunding money or bonds deposited as bail.[8]

If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond "forfeited."[9] Within 5 days after forfeiture of a bail bond, the court must mail a notice to the surety agent and the surety company.[10] The forfeiture of a bond must be paid within 60 days of the date the notice to the bail bond agent and surety was filed.[11] However, after a breach of the bond, the law requires a court to "discharge" a forfeiture (before it is paid) within 60 days upon:

- a determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant's control;
- a determination that, at the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison; or
- surrender or arrest of the defendant if the delay has not thwarted the proper prosecution of the defendant.[12]

In addition to the above, the clerk of court must discharge the forfeiture of the bond if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment.[13] The bail bond agent is required to pay the costs associated with returning the defendant to the county of jurisdiction, as a condition of the clerk discharging the forfeiture.[14]

In cases where a bond has been forfeited and not paid or discharged by a court within 60 days, the court enters a judgment against the bail bond agent for the amount of the bond.[15] After the judgment is entered, the court is required to furnish DFS and the surety company issuing the bond with a certified copy of the judgment.[16] If this judgment is not paid within 35 days, the court provides DFS and the sheriff of the county in which the bond was executed, copies of the judgment and a certification that the judgment has not been satisfied.[17] DFS receives notice of the judgment and monitors unpaid judgments as a part of its regulation of surety insurance companies. Bail bond agents who have outstanding judgments which are unpaid for 35 days are precluded by law from executing bail bonds. After 50 days of an unpaid judgment, the surety company is precluded by law from issuing bail bonds.[18]

The law provides that within 10 days after all of the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled.[19] All of the conditions of a bond are deemed to be satisfied after the defendant has been adjudicated guilty or not guilty.[20]

Polakoff Bail Bonds v. Orange County

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[6] s. 903.21, F.S.
[7] *Id.*
[8] *Id.*
[9] s. 903.26, F.S.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] s. 903.27, F.S.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] s. 903.31, F.S.
[20] *Id.*

Section 903.31(1), F.S., states, in part: "An adjudication of guilt or innocence of the defendant shall satisfy the conditions of the bond."

Section 903.31(2), F.S. states:

> The original appearance bond shall not be construed to guarantee deferred sentences, appearance during or after a presentence investigation, appearance during or after appeals, conduct during or appearance after admission to a pretrial intervention program, payment of fines, or attendance at educational or rehabilitation facilities the court otherwise provides in the judgment. If the original appearance bond has been forfeited or revoked, the bond shall not be reinstated without approval from the surety on the original bond.

In *Polakoff Bail Bonds v. Orange County*, the Florida Supreme Court said the condition of an appearance bond was not satisfied when the trial court accepts a plea of guilty and enters a finding of guilt, but withholds adjudication and judgment and continues the case for sentencing until the completion of the presentence investigation.[21] The court found that a judgment must be entered in order for the conditions of bond to be satisfied.[22] The court read s. 903.31, F. S., in conjunction with s. 903.045, F.S., which explains the nature of a surety bail bond:

> It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent licensed pursuant to chapter 648 in connection with the pretrial or appellate release of a criminal defendant, shall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.[23]

The court found that "in the context of a presentence investigation, unless the trial court adjudicates the defendant guilty and provides for the presentence investigation within the judgment, the bond is not satisfied and the defendant must continue to appear at all subsequent proceedings to avoid forfeiture."[24]

Subsequent to the *Polakoff Bail Bonds* decision, the Fifth District Court of Appeal found that the Florida Supreme Court's decision in *Polakoff Bail Bonds* was limited to the circumstances of a presentence investigation where no judgment had been entered, but reasoned that "because there is never an adjudication of guilt or innocence before a defendant is accepted into a pretrial intervention program, we believe that the legislature must have intended, in cases involving pretrial intervention, an exception to the general rule requiring an adjudication for discharge of a bond."[25]

Effect of Proposed Changes

Pretrial Release

As noted above, there is currently a presumption in favor of release on *nonmonetary* conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime. This bill provides that defendants charged with a second or subsequent felony within three years after the date

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[21] 634 So.2d 1083 (Fla. 1994).
[22] *Id.* at 1085.
[23] *Id.*
[24] *Id.*
[25] *Rosenberg Bail Bonds v. Orange County*, 663 So.2d 1389, 1392 (Fla. 5th DCA 1995).

of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of release on nonmonetary conditions.

Additionally, existing law mandates certain conditions of pretrial release. A defendant on pretrial release must refrain from criminal activity and must refrain from contact with the victim. This bill requires a defendant to comply with all conditions of pretrial release.

This bill also *requires* judges who grant monetary bail to set a separate and specific bail amount for each charge.[26]

Bail Bonds

This bill amends the bail bond forfeiture statute to *require* a court to issue a capias or an arrest warrant for a defendant who has failed to appear.[27] The capias or arrest warrant must comply with the requirements of s. 903.046(2)(d), F.S.,[28] and must require extradition of the defendant when arrested in another state if the original charge is a felony. The capias must also require return transportation of the defendant when arrested in another state to the jurisdiction of the court. The bill provides that if the court fails to issue a capias or an arrest warrant, any bonds deposited by a bail bond agent shall be discharged.

This bill also allows for exoneration of the surety if the State Attorney fails to institute extradition proceedings or extradite a defendant on a bail bond if the surety agrees in writing to pay transportation costs. In such instances, any forfeiture or judgment must be set aside or vacated.

This bill provides that in any case in which a bond forfeiture has been discharged by the court conditioned on payment of costs and fees, the amount for which judgment may be entered may not exceed the costs and fees. The bill provides for the cancellation of the bond by the clerk of the court without a court order. This bill provides that a bond does not guarantee a defendant's conduct or appearance at any time after:

- The defendant enters a plea of guilty or nolo contendere;
- The defendant enters into an agreement for deferred prosecution or agrees to enter a pretrial intervention program;
- The defendant is acquitted;
- The defendant is adjudicated guilty;
- Adjudication of guilt is withheld; or
- The defendant is found guilty by a judge or jury.

This bill would have the effect of overruling the *Polakoff Bail Bond* holding that a bond is not satisfied when adjudication is withheld.

C. SECTION DIRECTORY:

Section 1. Amends s. 903.02, F.S., providing that any judge setting or granting bail shall set a separate bail amount for each charge or offense.

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[26] Florida Statutes do not currently require (or prevent) a judge to set a separate bail for each offense charged. However, the usual practice is for judges to set one bail amount regardless of how many offenses a defendant is charged with.

[27] Although not required by statute, courts will generally issue a capias or an arrest warrant for a defendant who has failed to appear as required by a bail bond. Additionally, Rule 3.131(g), Fla. R. Crim. Proc., authorizes, but does not require, courts to direct the arrest and commitment of a defendant at large on bail when there has been a breach.

[28] Section 903.046(2)(d), F.S., relates to what a court may consider in determining whether to release a defendant on bail or other conditions. It is not related to capiases or arrest warrants and thus appears to be an incorrect citation.

Section2. Amends s. 903.046, F.S., providing that a defendant forfeits the right to a presumption in favor of release on nonmonetary conditions if charged with a second or subsequent felony within a certain time period;

Section 3. Amends s. 903.047, F.S., requiring a defendant to comply with all conditions of pretrial release.

Section 4. Amends s, 903.26, F.S., providing for issuance of a capias or arrest warrant for a defendant who has failed to appear; providing requirements for such a capias or warrant; providing for exoneration of a surety and discharge of any bonds if a court fails or refuses to issue such capias or warrant; providing that failure of the state attorney to institute extradition proceedings or extradite the principal on a bail bond after the surety's written agreement to pay actual transportation costs exonerates the surety.

Section 5. Amends s. 903.27, F.S., providing that in cases in which the bond forfeiture has been discharged by the court, the amount of the judgment may not exceed the amount of unpaid fees or costs upon which the discharge had been conditioned.

Section 6. Amends s. 903.31, F.S., providing that the clerk of court shall furnish an executed certificate of cancellation to the surety; providing that the original appearance bond does not guarantee the defendant's conduct or appearance in court under certain circumstances.

Section 7. This act takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bail bond industry will benefit in the following ways:

- Requiring judges to set separate bail amounts for each charged offense may result in an increase of bail bond premiums;
- Removing the presumption in favor of release on nonmonetary conditions for defendants charged with a second or subsequent felony within three years of a prior felony charge will likely increase the number of persons who receive bail and use the services of a bail bond agent;
- Bail bond agents will be exonerated and their bond will be returned if a court fails to issue a capias or warrant that contains specific conditions in **all** instances where a defendant fails to appear; and

- After a bail bond agent agrees in writing to pay the transport costs, the agent will be exonerated and their bond will be returned if the state attorney fails to institute extradition proceedings or extradite the principal on a bail bond.

D. FISCAL COMMENTS:

There could be a workload increase associated with requiring judges to set bail separately for each charge or offense. This would increase the amount of time spent by a judge spent per defendant and increase paperwork required of the courts, clerks of court and county jail personnel.

Removing the presumption in favor of release on nonmonetary conditions for defendants charged with a second or subsequent felony within three years and the requirement to set separate bail amounts for each offense could increase the number of defendants that are not able to bond out of jail. This could increase detainee populations in county jails.

In addition, the requirement for the court to issue an arrest warrant each time a defendant fails to appear could increase workload for the sheriff.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Although the bill could result in increased workload for county jails and sheriffs, the bill appears to be exempt from the provisions of Article VII, section 18 because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 2 of the bill provides that defendants give up their right to a presumption in favor of release on nonmonetary conditions if the defendant is charged with a second or subsequent felony offense within three years after the date of a prior felony charge.

- The Florida Constitution provides, with some exceptions, that persons charged with a crime are entitled to pretrial release *on reasonable conditions*. Section 907.041, F.S., creates a presumption in favor of release on nonmonetary conditions, and provides that persons must be released on monetary conditions if such conditions are necessary to assure the presence of the person at court proceedings, protect the community from risk of physical harm to persons; and to assure the integrity of the judicial process. Any challenge to the above provision would likely relate to whether it is a reasonable condition that would assure the defendant's presence in court, protect the community from risk of physical harm to persons, and assure the integrity of the judicial process.

Section 4 of the bill *requires* a court to issue a capias or an arrest warrant for a defendant who has failed to appear. The capias or arrest warrant must comply with the requirements of s. 903.046(2)(d), F.S., must require extradition of the defendant when arrested in another state if the original charge is a felony, and must require return transportation of the defendant when arrested in another state to the jurisdiction of the court. If the court fails to issue a capias or an arrest warrant, any bonds deposited by a bail bond agent shall be discharged.

- As noted above, the citation to s. 903.046(2)(d), F.S., appears to be incorrect as the cited section does not discuss capiases or arrest warrants.
- Currently, Florida Statutes do not *require* a court to issue a capias or warrant when a defendant fails to appear. Instead, courts are given *discretion* to issue a capias or warrant in such circumstances. *See* Rule 3.131, Fla. R. Crim. Proc. There are times when a defendant fails to appear because he or she is unavailable (e.g. hospitalized, has another court appearance at the same time) to attend. In many of these instances, the court is aware of the circumstances and permits the defendant to be absent. However, as drafted, this bill would *require* a court to issue a capias or warrant in these circumstances. If the court fails to do so, even if it was intentional, any bonds deposited by the bail bond agent must be discharged (i.e. given back to the bail bond agent).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to pretrial release; amending s. 903.02, F.S.; providing that any judge setting or granting bail shall set a separate bail amount for each charge or offense; amending s. 903.046, F.S.; providing that a defendant forfeits the right to a presumption in favor of release on nonmonetary conditions if charged with a second or subsequent felony within a certain time period; amending s. 903.047, F.S.; requiring a defendant to comply with all conditions of pretrial release; amending s. 903.26, F.S.; providing for issuance of a capias or arrest warrant for a defendant who has failed to appear; providing requirements for such a capias or warrant; providing for exoneration of a surety and discharge of any bonds if a court fails or refuses to issue such capias or arrest warrant; providing that failure of the state attorney to institute extradition proceedings or extradite the principal on a bail bond after the surety's written agreement to pay actual transportation costs exonerates the surety; amending s. 903.27, F.S; providing that in cases in which the bond forfeiture has been discharged by the court, the amount of the judgment may not exceed the amount of the unpaid fees or costs upon which the discharge had been conditioned; amending s. 903.31, F.S.; providing that the clerk of court shall furnish an executed certificate of cancellation to the surety; providing that the original appearance bond does not guarantee the defendant's conduct or appearance in court

under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) is added to section 903.02, Florida Statutes, to read:

903.02 Actions following ~~with respect to~~ denial; changes in bail ~~or~~ conditions ~~of bail~~ or bond amount; separation by charge or offense ~~of bond prohibited; "court" defined~~.--

(4) Any judge setting or granting monetary bail shall set a separate and specific bail amount for each charge or offense. When bail is posted, each charge or offense requires a separate bond.

Section 2. Subsection (3) is added to section 903.046, Florida Statutes, to read:

903.046 Purpose of and criteria for bail determination.--

(3) If a defendant is charged with a second or subsequent felony within 3 years after the date of a prior felony charge, regardless of whether a conviction was entered, the defendant forfeits the right to a presumption in favor of release on nonmonetary conditions as provided in s. 907.041.

Section 3. Subsection (1) of section 903.047, Florida Statutes, is amended to read:

903.047 Conditions of pretrial release.--

(1) As a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant ~~court~~ shall ~~require that~~:

(a) ~~The defendant~~ Refrain from criminal activity of any

kind.~~; and~~

(b) ~~The defendant~~ Refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure.

(c) Comply with all conditions of pretrial release.

Section 4. Subsections (1) and (5) of section 903.26, Florida Statutes, are amended to read:

903.26 Forfeiture of ~~the~~ bond; ~~when and how directed;~~ discharge; ~~how and when made;~~ effect of payment.--

(1)(a) A bail bond shall not be forfeited unless:

1.~~(a)~~ The information, indictment, or affidavit was filed within 6 months from the date of arrest;~~,~~ and

2.~~(b)~~ The clerk of court gave the surety at least 72 hours' notice, exclusive of Saturdays, Sundays, and holidays, before the time of the required appearance of the defendant. Notice shall not be necessary if the time for appearance is within 72 hours from the time of arrest~~,~~ or if the time is stated on the bond.

(b) Instant with any failure to appear by a defendant, the court shall order and issue to the sheriff for execution a capias or arrest warrant for the defendant who has failed to appear. Such capias or warrant shall comply with the requirements of s. 903.046(2)(d) and shall also require extradition of the defendant when arrested in another state if the original charge is a felony and require return transportation of the defendant when arrested in another state to the jurisdiction of the court when arrested on any case within the state. If the court fails or refuses to issue such

capias or arrest warrant, the surety shall immediately be exonerated and any bonds deposited shall be discharged by the clerk of the court in compliance with s. 903.31(1).

(5)(a) The court shall discharge a forfeiture within 60 days upon:

1.~~(a)~~ A determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant's control. The potential adverse economic consequences of appearing as required shall not be considered as constituting a ground for such a determination;

2.~~(b)~~ A determination that, at the time of the required appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison;

3.~~(c)~~ Surrender or arrest of the defendant if the delay has not thwarted the proper prosecution of the defendant. If the forfeiture has been before discharge, the court shall direct remission of the forfeiture. The court shall condition a discharge or remission on the payment of costs and the expenses incurred by an official in returning the defendant to the jurisdiction of the court.

(b) Failure of the state attorney to institute extradition proceedings or extradite the principal on a bail bond after the surety has agreed in writing to pay actual transportation costs shall exonerate the surety, and any forfeiture or judgment shall be set aside or vacated and any payment by the surety of a forfeiture or judgment shall be remitted in full.

Section 5. Subsection (1) of section 903.27, Florida Statutes, is amended to read:

903.27 Forfeiture to judgment.--

(1) If the forfeiture is not paid or discharged by order of a court of competent jurisdiction within 60 days and the bond is secured other than by money and bonds authorized in s. 903.16, the clerk of the circuit court for the county where the order was made shall enter a judgment against the surety for the amount of the penalty and issue execution. However, in any case in which the bond forfeiture has been discharged by the court of competent jurisdiction conditioned upon the payment by the surety of certain costs or fees as allowed by statute, the amount for which judgment may be entered may not exceed the amount of the unpaid fees or costs upon which the discharge had been conditioned. Judgment for the full amount of the forfeiture shall not be entered if payment of a lesser amount will satisfy the conditions to discharge the forfeiture. Within 10 days, the clerk shall furnish the Department of Financial Services and the Office of Insurance Regulation of the Financial Services Commission with a certified copy of the judgment docket and shall furnish the surety company at its home office a copy of the judgment, which shall include the power of attorney number of the bond and the name of the executing agent. If the judgment is not paid within 35 days, the clerk shall furnish the Department of Financial Services, the Office of Insurance Regulation, and the sheriff of the county in which the bond was executed, or the official responsible for operation of the county jail, if other than the sheriff, two copies of the judgment and a certificate stating that the judgment remains unsatisfied. When and if the judgment is properly paid or an

order to vacate the judgment has been entered by a court of competent jurisdiction, the clerk shall immediately notify the sheriff, or the official responsible for the operation of the county jail, if other than the sheriff, and the Department of Financial Services and the Office of Insurance Regulation, if the department and office had been previously notified of nonpayment, of such payment or order to vacate the judgment. The clerk shall also immediately prepare and record in the public records a satisfaction of the judgment or record the order to vacate judgment. If the defendant is returned to the county of jurisdiction of the court, whenever a motion to set aside the judgment is filed, the operation of this section is tolled until the court makes a disposition of the motion.

Section 6. Section 903.31, Florida Statutes, is amended to read:

903.31 Canceling the bond.--

(1) Within 10 business days after the conditions of a bond have been satisfied or the forfeiture discharged or remitted, ~~the court shall order~~ the bond shall be canceled and, if the surety has attached a certificate of cancellation to the original bond, the clerk of the court shall furnish an executed certificate of cancellation to the surety without cost. An adjudication of guilt or innocence of the defendant shall satisfy the conditions of the bond. The original appearance bond shall expire 36 months after such bond has been posted for the release of the defendant from custody. This subsection does not apply to cases in which a bond has been declared forfeited.

(2) The original appearance bond does ~~shall~~ not ~~be~~

~~construed to~~ guarantee deferred sentences, appearance during or after a presentence investigation, appearance during or after appeals, ~~conduct during or appearance after admission to a pretrial intervention program,~~ payment of fines, or attendance at educational or rehabilitation facilities the court otherwise provides in the judgment. If the original appearance bond has been forfeited or revoked, the bond shall not be reinstated without approval from the surety on the original bond.

(3) The original appearance bond does not guarantee the defendant's conduct or appearance in court at any time after:

(a) The defendant enters a plea of guilty or nolo contendere;

(b) The defendant enters into an agreement for deferred prosecution or agrees to enter a pretrial intervention program;

(c) The defendant is acquitted;

(d) The defendant is adjudicated guilty;

(e) Adjudication of guilt of the defendant is withheld; or

(f) The defendant is found guilty by a judge or jury.

(4) ~~(3)~~ In any case where no formal charges have been brought against the defendant within 365 days after arrest, the court shall order the bond canceled unless good cause is shown by the state.

Section 7. This act shall take effect October 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 827

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Criminal Justice Appropriations

Representative Planas offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) is added to section 903.02, Florida Statutes, to read:

903.02 Actions following ~~with respect to~~ denial; changes in bail ~~or~~ conditions ~~of bail~~ or bond amount; separation by charge or offense ~~of bond prohibited; "court" defined~~.--

(4) Any judge setting or granting monetary bail shall set a separate and specific bail amount for each charge or offense. When bail is posted, each charge or offense requires a separate bond.

Section 2. Subsection (1) of section 903.047, Florida Statutes, is amended to read:

903.047 Conditions of pretrial release.--

(1) As a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant ~~court~~ shall ~~require that~~:

(a) ~~The defendant~~ Refrain from criminal activity of any kind.~~; and~~

(b) ~~The defendant~~ Refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure.

(c) Comply with all conditions of pretrial release.

Section 3. Subsection (1) of section 903.27, Florida Statutes, is amended to read:

903.27 Forfeiture to judgment.--

(1) If the forfeiture is not paid or discharged by order of a court of competent jurisdiction within 60 days and the bond is secured other than by money and bonds authorized in s. 903.16, the clerk of the circuit court for the county where the order was made shall enter a judgment against the surety for the amount of the penalty and issue execution. However, in any case in which the bond forfeiture has been discharged by the court of competent jurisdiction conditioned upon the payment by the surety of certain costs or fees as allowed by statute, the amount for which judgment may be entered may not exceed the amount of the unpaid fees or costs upon which the discharge had been conditioned. Judgment for the full amount of the forfeiture shall not be entered if payment of a lesser amount will satisfy the conditions to discharge the forfeiture. Within 10 days, the clerk shall furnish the Department of Financial Services and the Office of Insurance Regulation of the Financial Services Commission with a certified copy of the judgment docket and shall furnish the surety company at its home office a copy of the judgment, which shall include the power of attorney number of the bond and the name of the executing agent. If the judgment is not paid within 35 days, the clerk shall furnish the Department of Financial Services, the Office of Insurance Regulation, and the sheriff of the county in which the bond was executed, or the official responsible for operation of the

county jail, if other than the sheriff, two copies of the judgment and a certificate stating that the judgment remains unsatisfied. When and if the judgment is properly paid or an order to vacate the judgment has been entered by a court of competent jurisdiction, the clerk shall immediately notify the sheriff, or the official responsible for the operation of the county jail, if other than the sheriff, and the Department of Financial Services and the Office of Insurance Regulation, if the department and office had been previously notified of nonpayment, of such payment or order to vacate the judgment. The clerk shall also immediately prepare and record in the public records a satisfaction of the judgment or record the order to vacate judgment. If the defendant is returned to the county of jurisdiction of the court, whenever a motion to set aside the judgment is filed, the operation of this section is tolled until the court makes a disposition of the motion.

Section 4. Section 903.31, Florida Statutes, is amended to read:

903.31 Canceling the bond.--

(1) Within 10 business days after the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled and, if the surety has attached a certificate of cancellation to the original bond, the clerk of the court shall furnish an executed certificate of cancellation to the surety without cost. An adjudication of guilt or innocence, an acquittal, or a withholding of an adjudication of guilt ~~of the defendant~~ shall satisfy the conditions of the bond. The original appearance bond shall expire 36 months after such bond has been posted for the release of the defendant from custody. This subsection does not apply to cases in which a bond has been declared forfeited.

(2) The original appearance bond does ~~shall~~ not ~~be construed to~~ guarantee deferred sentences, sentencing deferrals, appearance during or after a presentence investigation, appearance during or after appeals, conduct during or appearance after admission to a pretrial intervention program, payment of fines, or attendance at educational or rehabilitation facilities the court otherwise provides in the judgment. If the original appearance bond has been forfeited or revoked, the bond shall not be reinstated without approval from the surety on the original bond.

(3) In any case where no formal charges have been brought against the defendant within 365 days after arrest, the court shall order the bond canceled unless good cause is shown by the state.

Section 5. This act shall take effect October 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

An act relating to pretrial release; amending s. 903.02, F.S.; providing that any judge setting or granting bail shall set a separate bail amount for each charge or offense; amending s. 903.047, F.S.; requiring a defendant to comply with all conditions of pretrial release; amending s. 903.27, F.S; providing that in cases in which the bond forfeiture has been discharged by the court, the amount of the judgment may not exceed the amount of the unpaid fees or costs upon which the discharge had been conditioned; amending s. 903.31, F.S.; providing that the clerk of court shall furnish an executed certificate of cancellation to the surety; providing that the original appearance bond does not guarantee the defendant's

conduct or appearance in court under certain circumstances; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. 827

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Criminal Justice Appropriations

Representative offered the following:

Amendment to Amendment (1) by Representative Planas (with title amendment)

Between lines 26 and 27 insert:

Section 3. Subsection (5) of section 903.26, Florida Statutes, is amended to read:

903.26 Forfeiture of ~~the~~ bond; ~~when and how directed;~~ discharge; ~~how and when made;~~ effect of payment.--

(5)(a) The court shall discharge a forfeiture within 60 days upon:

1.~~(a)~~ A determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant's control. The potential adverse economic consequences of appearing as required shall not be considered as constituting a ground for such a determination;

2.~~(b)~~ A determination that, at the time of the required appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison;

3.~~(c)~~ Surrender or arrest of the defendant if the delay has not thwarted the proper prosecution of the defendant. If the forfeiture has been before discharge, the court shall direct

remission of the forfeiture. The court shall condition a discharge or remission on the payment of costs and the expenses incurred by an official in returning the defendant to the jurisdiction of the court.

(b) If a corporate surety bond has been forfeited in a felony case and the state attorney chooses to not extradite the defendant if arrested in another state and the surety has agreed in writing to pay actual transportation costs, the court shall exonerate the surety, and any forfeiture or judgment shall be set aside or vacated and any payment by the surety of a forfeiture or judgment shall be remitted in full.

========== T I T L E A M E N D M E N T ==========

Remove line 107 and insert:

conditions of pretrial release; amending s. 903.26, F.S., providing requirements for bond forfeiture; amending s. 903.27, F.S;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1593 Cybercrime
SPONSOR(S): Barreiro
TIED BILLS: **IDEN./SIM. BILLS:** SB 2322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Ferguson	Kramer
2) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1593 creates s. 16.61, F.S., establishing a Cybercrime Unit (Unit) in the Department of Legal Affairs within the Office of the Attorney General. This Unit is authorized to investigate violations of state law pertaining to the sexual exploitation of children which are facilitated by or connected to the use of any device capable of storing electronic data.

This bill provides the law enforcement officers in the Unit with the authority to conduct criminal investigations, execute search warrants, bear arms and make arrests related to cybercrimes.

The bill would increase workload for the Department of Legal Affairs, but the department indicates that it has the necessary investigative positions in place to accommodate the increased workload.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

According to the Attorney General's website[1]:

> In 2005, Attorney General Charlie Crist established a Cybercrime Unit to expand programs to further safeguard children from predatory criminals. The Unit includes law enforcement investigators and prosecutors whose primary mission is to target child predators, child pornography, and Internet-based sexual exploitation of children.
>
> The Cybercrime Unit is dedicated to investigating and prosecuting any crime perpetrated or substantially facilitated using a computer, the Internet, digital media, cellular phone, personal digital assistant (PDA), or any other electronic device. The investigators and the prosecutors in the Unit are specially trained in current technologies, tactics, and the law, and share their expertise through educational programs and community awareness efforts.
>
> Through the Cybercrime Unit, the Attorney General encourages extensive cooperative efforts with federal and state prosecutors, the Florida Department of Law Enforcement (FDLE), the NetSmartz Workshop, the National Center for Missing and Exploited Children (NCMEC), other Attorneys General, and all Florida law enforcement agencies.

The Cybercrime Unit is not currently referenced in Florida Statutes. For fiscal year 2005-2006, the Legislature funded 4 positions (3 investigators and one senior assistant attorney) for this cybercrime unit from the Legal Affairs Revolving Trust Fund[2].

Effect of Bill

HB 1593 creates s. 16.61, F.S., to provide a Cybercrime Unit (Unit) in the Department of Legal Affairs within the Office of the Attorney General. Essentially, this bill will codify the Cybercrime unit Attorney General Charlie Crist established in 2005.

This bill will authorize the Unit to investigate violations of state law pertaining to the sexual exploitation of children which are facilitated by or connected to the use of any device capable of storing electronic data. Violators of this bill will be prosecuted by the Statewide Prosecutor if the offense occurs in more than one judicial circuit; otherwise, the State Attorney in their respective circuit in conjunction with the Statewide Prosecutor will prosecute the offender.

This bill also provides that:

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[1] http://myfloridalegal.com/

[2] According to staff on the Senate Justice Appropriations Committee, the total appropriation was $416,030 ($72,683 of which was non-recurring).

- Investigators employed by the Cybercrime Unit who are certified in accordance with s. 943.1395, F.S., are law enforcement officers of the state who shall have the authority to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and all necessary service of process throughout the state.[3]

- In carrying out the duties and responsibilities of this section, the Attorney General, or any duly designated employee, is authorized to subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in civil or criminal judicial proceedings; and seek any civil remedy provided by law, including, but not limited to, a remedy provided under s. 932.701, F.S.[4]

- The Attorney General, or any duly designated employee, shall provide notice to the local sheriff, or his or her designee, of any arrest effected by the Cybercrime Unit.

C. SECTION DIRECTORY:

Section 1. Creates s. 16.61, F.S., the Cybercrime Unit.

Section 2. Provides this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   There is increased workload associated with the new responsibilities. The Legislature, however, established 4 FTE and provided $411,350 for the Cybercrime Unit during FY 2005-06. Funding for the Cybercrime Unit is continued in the House proposed General Appropriations Act for FY 2006-07. This bill makes the investigators sworn law enforcement which will move them from regular retirement to special risk.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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[3] According to staff in the Office of the Attorney General, investigators in the Cybercrime Unit are certified law enforcement officers. They are authorized to conduct criminal investigations, bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and all necessary service of process throughout the state. The bill specifically codifies this authority.

[4] According to staff in the Office of the Attorney General, the Attorney General and the referenced "duly designated employee" are authorized to subpoena witnesses or materials within or outside the state, administer oaths and affirmations, and collect evidence for possible use in civil or criminal judicial proceedings; and seek any civil remedy provided by law, including, but not limited to, a remedy provided under s. 932.701, F.S. The bill specifically codifies this authority.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

According to the State of Florida's retirement plan, normal retirement occurs at the earlier of 30 years of service or age 62, whereas retirement from the Special Risk class is the earlier of 25 years of service or age 55, whichever is earlier. Current retirement plan contribution rates paid by the State of Florida (the employer) vary from 9.98% for regular class employees to 22.16% for the Special Risk class.

A bill to be entitled

An act relating to cybercrime; creating s. 16.61, F.S.; creating a Cybercrime Unit within the Department of Legal Affairs; providing for powers, duties, and personnel of the unit; requiring notice to sheriffs of arrests by the unit in their jurisdictions; providing an effective date.

WHEREAS, the use of computers or devices capable of storing electronic data for the criminal purposes of spreading child pornography and engaging in the sexual exploitation and predation of children has greatly increased in this state, and

WHEREAS, special training and expertise is needed for the effective investigation of these crimes, and

WHEREAS, the impact of these crimes stretches across all jurisdictions of this state creating unique burdens on local law enforcement and local prosecutors, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 16.61, Florida Statutes, is created to read:

16.61 Cybercrime Unit.--

(1) A Cybercrime Unit is created in the Department of Legal Affairs. This office may investigate alleged violations of state law pertaining to sexual exploitation and predation of children that is either facilitated by or connected to the use of any device capable of storing electronic data.

(2) Investigators employed by the Cybercrime Unit who are certified in accordance with s. 943.1395 shall be law enforcement officers of the state. These investigators shall have the authority to conduct criminal investigations; bear arms; make arrests; and apply for, serve, and execute search warrants, arrest warrants, capias, and all necessary service of process throughout the state.

(3) In carrying out the duties and responsibilities of this section, the Attorney General, or any duly designated employee of the Cybercrime Unit, may:

(a) Subpoena witnesses or materials, within or outside the state, administer oaths and affirmations, and collect evidence for possible use in either civil or criminal judicial proceedings.

(b) Seek any civil remedy provided by law, including, but not limited to, the Florida Contraband Forfeiture Act, ss. 932.701-932.707.

(4) The Attorney General, or a duly designated employee of the Cybercrime Unit, shall provide notice to the local sheriff, or his or her designee, of any arrest effected by the Cybercrime Unit in the sheriff's jurisdiction.

Section 2. This act shall take effect upon becoming a law.

A bill to be entitled

An act relating to a juvenile justice pilot program; creating a pilot program that authorizes specified courts to select commitment programs for juvenile delinquents; providing definitions; providing program's purpose; requiring the Department of Juvenile Justice to develop implementation procedures and to publish specified information about commitment programs on its website; providing procedures for the selection of commitment programs by courts; requiring evaluation and reports by the Office of Program Policy and Government Accountability; specifying department and court responsibilities relating to the reports; providing for future repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Judicial discretion to select commitment programs; pilot program.--

(1) The definitions contained in s. 985.03, Florida Statutes, apply to this section. Additionally, for purposes of this section, the term:

(a) "Available placement" means a commitment program for which the department has determined the youth is eligible.

(b) "Commitment program" means a facility, service, or program operated by the department or by a provider under contract with the department within a restrictiveness level.

(c) "Delinquency court" means a circuit court in the First, Eleventh, or Thirteenth Judicial Circuit.

(d) "Eligible" means a determination that the youth satisfies admission criteria for the commitment program.

(e) "Wait period" means the shortest period of time expected to elapse prior to placement of a youth in a commitment program, as determined by the department based upon anticipated release dates for youth currently in the commitment program.

(2) Between September 1, 2006, and July 1, 2010, a pilot program shall be conducted in the First, Eleventh, and Thirteenth Judicial Circuits, which authorizes delinquency courts to select commitment programs for youth. The purpose of the pilot program is to identify and evaluate the benefits and disadvantages of affording such judicial discretion prior to legislative consideration of statewide implementation.

(3) Before August 31, 2006, the department shall:

(a) Develop, in consultation with delinquency court judges, procedures to implement this section.

(b) Publish on its Internet website information that identifies the name and address of each commitment program and that describes for each identified commitment program the population of youth served; the maximum capacity; the services offered; the admission criteria; the most recent recidivism rates; and the most recent cost-effectiveness rankings and quality assurance results under s. 985.412, Florida Statutes. The department shall continually update information published under this paragraph as modifications occur.

(4) Between September 1, 2006, and July 1, 2010, a delinquency court may:

(a) Order the department to include in a youth's predisposition report a list of all available placements within each restrictiveness level identified by the court or recommended by the department. The list shall also indicate the wait period for each available placement identified by the department.

(b)1. Specify for a youth committed by the court an available placement identified in the listing under paragraph (a), which has a wait period of 30 calendar days or less for a minimum-risk nonresidential, low-risk residential, moderate-risk residential, or high-risk residential commitment program or a wait period of 20 calendar days or less for a maximum-risk residential commitment program; or

2. Alternatively, a delinquency court may specify:

a. An available placement with a wait period in excess of those identified in subparagraph 1., if the court states reasons on the record establishing by a preponderance of the evidence that the available placement is in the youth's best interest; or

b. A commitment program that is not listed as an available placement, if the court states reasons on the record establishing by a preponderance of the evidence that the youth is eligible for the commitment program and that the commitment program is in the youth's best interest.

(5) When a delinquency court specifies an available placement or commitment program for a youth under paragraph (4)(b), the youth shall be placed, as specified by the court,

when the next regularly scheduled opening occurs after the placement of other youth who were previously committed and waiting for that program.

(6)(a) The Office of Program Policy Analysis and Government Accountability shall conduct a longitudinal evaluation of the pilot program created by this section and shall submit a written report to the appropriate substantive and fiscal committees of the Legislature and to the Governor on January 1, 2008, and annually thereafter, which identifies, according to judicial circuit and restrictiveness level, the following data, as it becomes available, for the pilot program period:

1. The number of youth committed to the department by a delinquency court.

2. The number of youth placed by a delinquency court in an available placement under subparagraph (4)(b)1. and sub-subparagraph (4)(b)2.a., and in a commitment program under sub-subparagraph (4)(b)2.b.

3. The number of youth placed in a department-specified commitment program.

4. The average wait period for, and the average number of days spent by youth in secure detention while awaiting placement in, delinquency court-specified commitment programs and department-specified commitment programs.

5. The number of youth who complete, and who are otherwise released from, delinquency court-specified commitment programs and department-specified commitment programs.

6. Educational achievements made by youth while participating in delinquency court-specified commitment programs and department-specified commitment programs.

7. The number of youth who are taken into custody for a felony or misdemeanor within 6 months following completion of delinquency court-specified commitment programs and department-specified commitment programs.

(b) Before August 31, 2006:

1. The department, in consultation with the Office of Program Policy Analysis and Government Accountability, shall develop reporting protocols to collect and maintain data necessary for the report required by this subsection.

2. The Office of Program Policy Analysis and Government Accountability, in consultation with staff of the appropriate substantive and fiscal committees of the Legislature, shall develop common terminology and operational definitions for the measurement of data necessary for the report required by this subsection.

(c) The reports required under paragraph (a) to be submitted on January 1, 2009, and January 1, 2010, must also include:

1. Findings by the Office of Program Policy Analysis and Government Accountability, the department, and delinquency courts regarding the benefits and disadvantages of authorizing courts to select commitment programs.

2. Recommendations by the Office of Program Policy Analysis and Government Accountability, the department, and

delinquency courts, if found to be warranted, for amendments to current statutes addressing commitment.

(7) This section is repealed effective July 1, 2010.

Section 2. This act shall take effect July 1, 2006.